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ABSTRACT

The American Indian Self-Determination and Education Assistance Act (S. 1017) was designed to promote Indian self-determination in two distinct but related areas: (1) Federally-funded Indian services and (2) Indian education. It proposed a vehicle by which Indian people can eventually assume full control over programs and services administered by the Bureau of Indian Affairs and the Indian Health Service. It further provided for increased Indian participation in the planning and conduct of Indian educational programs, and for new programs to upgrade the quality of Indian education. On May 20, 1974, the House Indian Affairs Subcommittee of the Interior and Insular Affairs Committee met to hear testimony on S. 1017 and other related legislation. The testimony consisted of discussions of the legislation and its provisions. Among the witnesses were representatives from the: National Advisory Council on Indian Education; Sinte Gleska Community College; Association on American Indian Affairs; Indian Education Training, Inc., Navajo Nation; Central Council of the Tlingit and Haida Indians of Alaska; Coalition of Indian Controlled School Boards; and Yakima Tribe. (NQ)

ED 100555

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 1017 and Related Bills

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WASHINGTON, D.C., MAY 20 AND 21, 1974

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INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

MONDAY, MAY 20, 1974

House of Representatives,
Indian Affairs Subcommittee of the
Committee on Interior and Insular Affairs,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 345, Cannon House Office Building, the Honorable Lloyd Meeds (chairman) presiding.

Mr. Meeds. The House Indian Affairs Subcommittee of the Interior and Insular Affairs Committee is meeting today to take testimony on S. 1017.

At this point in the record the bill, S. 1017 together with H.R. 6103 and H.R. 6372, along with the Report of the Department of the Interior and the letter from the General Accounting Office will appear in the record.

[The bills and material mentioned above follow:]

[S. 1017, 93d Cong., 2d sess.]

AN ACT To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

CONGRESSIONAL FINDINGS

Sec. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

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(2) the Federal responsibility for and assistance to education of Indian children, Indian adult education, and Indian skills training has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children and adults to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

DEFINITIONS

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means a person who is a member of an Indian tribe;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(c) "tribal organization" means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities;

(d) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(e) "school district" means any political subdivision of a State which is responsible for the provision, administration, and control of public education through grade 12 as defined by the law of such State; and

(f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

TITLE I—THE INDIAN SELF-DETERMINATION ACT

SEC. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

SEC. 102. (a) The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, parts B and D of title II of this Act, any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory, (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization is deficient with respect to (1) equipment, (2) bookkeeping and accounting procedures, (3) substantive knowledge of the program to be contracted for, (4) community support for the contract, (5) adequately trained personnel, or (6) other necessary components of contract performance.

(b) Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section he shall (1) state his objections in writing to the tribe within sixty days, (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy insurance.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

SEC. 103. (a) The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory, (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That the Secretary of Health, Education, and Welfare, in arriving at his finding, shall consider whether the tribe or tribal organization will be deficient with respect to (1) equipment, (2) bookkeeping and accounting procedures, (3) substantive knowledge of the program to be contracted for, (4) community support for the contract, (5) adequately trained personnel, or (6) other necessary components of contract performance.

(b) Whenever the Secretary of Health, Education, and Welfare declines to enter into a contract or contracts pursuant to subsection (a) of this section he shall (1) state his objections in writing to the tribe within sixty days, (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary of Health, Education, and Welfare is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise the defense of tribal immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 104. The Secretaries of the Interior and of Health, Education, and Welfare are each authorized, upon the request of any Indian tribe, to make a grant or grants to any tribal organization of such Indian tribe for planning, training, evaluation, and other activities specifically designed to make it possible for such tribal organization to enter into a contract or contracts pursuant to sections 102 and 103 of this Act.

DETAIL OF PERSONNEL

SEC. 105. (a) Section 3371 (2) of chapter 33 of title 5, United States Code, is amended (1) by deleting the word "and" immediately after the semicolon in clause (A); (2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new clause:

"(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

(b) The Act of August 5, 1954 (68 Stat. 674), as amended, is further amended by adding a new section 8 after section 7 of the Act, as follows:

"SEC. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or commmunity, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act".

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended,".

ADMINISTRATIVE PROVISIONS

SEC. 106. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended.

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title.

(c) Any contract requested by a tribe pursuant to sections 102 and 103 of this Act shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amount of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases, beyond the control of a tribal organization.

(d) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as necessary to carry out the purposes of this title: *Provided, however*, That whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not more than one hundred and twenty days from the date of the request by the tribe or at such later date as may be mutually agreed to by the appropriate Secretary and the tribe.

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary or agency head may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(f) The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(g) Contracts with tribal organizations and regulations adopted pursuant to this Act shall include provisions to assure the fair and uniform provision by such organizations of services and assistance to Indians in the conduct and administration of programs or activities under such contracts.

SEC. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out of the provisions of this title.

(b)(1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall, to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) The Secretary of the Interior and the Secretary of Health, Education, and tary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations the repective Secretary or Secretaries shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

SEC. 108. For each fiscal year during which an Indian tribal organization receives or expands funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on conduct of the program or service involved, and such other information as the appropriate Secretary may request. The reports and records of the Indian tribal organization with respect to such contract or grant shall be subject to audit by the appropriate Secretary and the Comptroller General of the United States.

SEC. 109. There are hereby authorized to be appropriated for the purposes of section 104 of this title the amount of $3,000,000 to the Department of the Interior and $2,000,000 to the Department of Health, Education, and Welfare for each of three succeeding fiscal years following the date of enactment of this Act.

SEC. 110. Nothing in this Act shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by any Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

SEC. 201. This title may be cited as the "Indian Education Assistance Act".

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

SEC. 202. The Act of April 16, 1934 (48 Stat. 596), as amended is further amended by adding at the end thereof the following new sections:

"SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives.

"SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, however*, That, whenever a local Indian committee or committees established pursuant to section 305(b)(2)(B)(ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district, such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

"(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

"SEC. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students.

"SEC. 7. There are hereby authorized to be appropriated for the education of Indians pursuant to this Act $65,000,000 for each of the fiscal years 1975 and 1976."

SEC. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1974, a report which shall include:

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including—

(A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended.

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

PART B—PREPARATION OF PROFESSIONALS IN INDIAN EDUCATION

SEC. 204. (a) The Secretary is authorized to establish and carry out a program of making grants to, and contracts with, institutions of higher education and other public, private nonprofit organizations or agencies, or Indian tribes or tribal organizations with relevant experience and expertise in order to provide fellowship and carry out programs and projects to—

(1) prepare persons to serve Indians in public, private, or totally federally funded schools as educational administrators, teachers, teacher aides, and ancillary educational personnel, including, but not limited to, school social workers, guidance counselors, nurses, and librarians; and

(2) improve the qualifications of persons who are serving Indians in such capacities.

(b) In selecting participants in or recipients for fellowships to programs and projects under this section preference shall be given to Indians.

(c) The Secretary is authorized and directed to develop criteria pursuant to which he shall evaluate all grants and contracts authorized under this section.

SEC. 205. For the purpose of making grants or contracts pursuant to this part B there is authorized to be appropriated $10,000,000 for the fiscal year after the enactment of this Act, and $15,000,000 for each of the next two succeeding fiscal years.

PART C—SCHOOL CONSTRUCTION

SEC. 206. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the aquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part C on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended.

(c) The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part C on any school eligible to receive funds under section 218 of this Act.

(d) Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities contructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

(f) For the purpose of implementing the provisions of this section, the Secretary shall assure that the rates of pay for personnel engaged in the construction or renovation of facilities constructed or carried out in whole or in part by funds made available pursuant to this section are not less than the prevailing local wage rates for similar work as determined in accordance with the Act of March 3, 1921 (46 Stat. 1491), as amended.

(g) Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation of the Congress. Such report shall include—

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section, and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended, from the Department of Health, Education, and Welfare to the Department of the Interior.

(h) For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of $35,000,000 for the fiscal year ending June 30, 1974; $35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

PART D—YOUTH INTERN PROGRAM

SEC. 207. In order to provide meaningful and career-related work opportunities for Indian youth who are not enrolled in educational programs during the summer months, the Secretary is authorized to establish and carry out an Indian youth intern program for any Indian sixteen years of age or older who is regularly enrolled in secondary school, vocational school, or higher education program during usual school terms.

SEC. 208. (a) In establishing and administering the Indian youth intern program, the Secretary shall designate or recognize community service fields including those related to education, child development, recreation, law, health services, engineering, research, science, government, agriculture and forestry, business and commerce, and other appropriate pursuits, which can provide useful experience to Indian youth in exploring and participating in activities related to their future choices of possible careers.

(b) The Secretary shall determine the number of Indian youth in the community or reservation who are interested in employment during the summer months in the fields designated in subsection (a) of this section.

(c) The Secretary shall require negotiations with employers for the employment of each Indian youth participating in the Indian youth intern program, such negotiations to include a job description outlining specific duties, evaluation of the progress of the Indian youth intern, and consultation by the employer with the Indian youth intern periodically.

SEC. 209. In establishing and carrying out the Indian youth intern program, the Secretary shall take such action as may be necessary to assure that—

(1) each Indian youth intern shall be paid not less than the Federal minimum wage;

(2) each Indian youth intern shall engage in activities which are supplemental to those of the regular work force where he is employed and shall not replace any regular adult full-time employee, except as a temporary substitute during any normal vacation or other such leave of any such employee;

(3) the total wages paid each Indian youth intern employed by a nonprofit agency shall be paid out of funds provided in this part D;

(4) one-half the wages paid each Indian youth intern employed by other than a nonprofit agency shall be paid out of funds provided in this part D, and one-half by the employer;

(5) each Indian youth intern shall be covered by appropriate workmen's compensation laws;

(6) no Indian youth intern shall be entitled, by reason of his employment as an intern, to participate in any pension, retirement, or unemployment compensation programs;

(7) there shall be one supervisor for each twenty Indian youth interns during their period of employment; that such supervisor shall be compensated at a rate not in excess of the minimum rate for GS-9 of the General Schedule under section 5332 of title 5, United States Code; and that, with respect to the position of supervisor, preference shall be given to qualified Indians residing in the locality in which the interns are employed.

SEC. 210. For the purpose of carrying out the provisions of this part D, there is hereby authorized to be appropriated $10,000,000 for the first fiscal year after the enactment of this Act, and $15,000,000 for each of the next two succeeding fiscal years.

PART E—EDUCATIONAL RESEARCH AND DEVELOPMENT

SEC. 211. (a) The Secretary is authorized to make grants to and contracts with universities and colleges and other public and private nonprofit agencies, institutions, and organizations, and to and with individuals for research, surveys, and demonstrations in the field of Indian education and for the dissemination of information derived from such research, surveys, and demonstrations.

(b) No grant shall be made or contract entered into pursuant to this section until the Secretary has obtained the advice and recommendations of educational specialists who are competent to evaluate proposals as to the soundness of design, prospects of productive results, and adequacy of the resources of any applicant to conduct research, surveys, or demonstration projects. Wherever possible among the educational specialists consulted shall be Indians who are not employees of the Federal Government.

(c) No grant shall be made or contract entered into pursuant to this section until the Secretary is satisfied that the activities to be funded do no substantially duplicate research, surveys, or demonstrations the results of which are or will be accessible to the public.

SEC. 212. For the purposes of carrying out the provisions of this part E, there is hereby authorized to be appropriated $2,000,000 for the first fiscal year after enactment of this Act, and $3,000,000 for each of the next two succeeding fiscal years.

PART F—ADULT, VOCATIONAL, AND EARLY CHILDHOOD EDUCATION

SEC. 213. After consultation with persons competent in the appropriate field of education, which persons shall include Indians who are not employees of the Federal Government, the Secretary shall present to the Ninety-fourth Congress, within sixty days of the convening thereof—

(1) a proposed program of adult and continuing education designed to meet the needs of Indian people;

(2) a proposed program designed to meet the vocational and technical career education needs of Indian people;

(3) a proposed program designed to meet the early childhood education needs of the Indian people;

(4) a proposed program designed to meet the special education needs of gifted and handicapped Indians aged three to twenty-one years;

(5) a review and analysis of existing programs in higher education for Indians administered by the Department of the Interior, and a proposed program of higher education designed to meet the needs of the Indian people; and

(6) an assessment of the capability of the Federal Government to measure effectively and accurately the educational progress and achievement of Indian people, such assessment to include a review of the ability of the Department of the Interior to measure the educational achievement and progress of Indian people. The Secretary is further directed in the preparation of such an assessment to consult with the Secretary of the Department of Health, Education, and Welfare, and such other agency heads as he deems appropriate, as to the capability of the Office of Education or the National Institute on Education to measure the educational progress and achievement of Indian people, and shall include the result of such consultations in such report.

SEC. 214. For the purpose of carrying out the provisions of this part F, there is hereby authorized to be appropriated $750,000 for the first fiscal year after the enactment of this Act.

PART G—GENERAL PROVISIONS

SEC. 215. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the school of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district.

SEC. 216. No funds from any contract or grant pursuant to this title except as provided in part B shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

SEC. 217. (a)(1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.

(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

SEC. 218. The Secretary is authorized and directed to provide funds, pursuant to this Act; the Act of April 16, 1934 (48 Stat. 596), as amended; or any other authority granted to him to any tribe or tribal organizational which controls and manages any previously private school. The Secretary shall transmit annually to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a report on the educational assistance program conducted pursuant to this section.

SEC. 219. The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235).

Passed the Senate April 1, 1974.

Attest:

FRANCIS R. VALEO,
Secretary.

[H.R. 6103, 93d Cong., 1st sess.]

A BILL To promote maximum Indian participation in the government of the Indian people; to provide for the full participation of Indian tribes in certain programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Self-Determination Act of 1973".

CONGRESSIONAL FINDINGS

SEC. 2. The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and it has denied to the Indian people an effective voice in the planning and implementing of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

DECLARATION OF POLICY

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination through maximum involvement and participation in, and direction of, Federal services to Indian communities which are more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation of the Indian people in the planning, conduct, and administration of those programs and services.

DEFINITIONS

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means an Indian, Eskimo, or Aleut person who is a member of a tribe, band, nation, or community, including any Alaska Native community as defined in the Alaska Native Claims Settlement Act, for which the Federal Government provides special programs and services because of their identity as Indians;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native community as defined in the Alaska Native Claims Settlement Act, for which the Federal Government provides special programs and services because of its Indian identity; and

(c) "tribal organization" means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or which is controlled by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization). Such an organization shall include the maximum participation of Indians in all phases of its activities.

CONTRACTS BY THE SECRETARY OF THE INTERIOR

SEC. 5. The Secretary of the Interior in authorized, in his discretion and upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions, thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended, and any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

SEC. 6. The Secretary of Health, Education, and Welfare is authorized, in his discretion and upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organizations of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 7. The Secretaries of the Interior and of Health, Education, and Welfare are each authorized, upon the request of any Indian tribe, to make a grant or grants to any tribal organization of any such Indian tribe for planning, training, evaluation, and other activities specifically designed to make it possible for such tribal organization to enter into a contract or contracts pursuant to sections 5 and 6 of this Act.

DETAIL OF PERSONNEL

SEC. 8. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized, upon the request of any tribal organization, to detail any civil service employee serving under a career or career-conditional appointment for a period of up to one hundred and eighty days to such tribal organization for the purpose of assisting such tribal organization in the planning, conduct, or administration of programs under contracts or grants made pursuant to section 5, 6, or 7 of this Act. The appropriate Secretary may, upon a showing by tribal organization of a continuing need for an employee detailed pursuant to this section, extend such detail for a period not to exceed ninety days.

(b) The Act of August 5, 1954 (68 Stat. 674), as amended, is further amended by adding a new section 8 after section 7 of the Act, as follows:

"SEC. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, personnel of the Service may be detailed by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 5, 6, or 7 of the Indian Self-Determination Act of 1973: *Provided*, That the cost of detailing such personnel is taken into account in determining the amount to be paid to such tribal organization under such contract or grant, and that the Secretary shall modify such contract or grant pursuant to subsection (c) of section 9 of the Indian Self-Determination Act of 1973 to effect the provisions of this section."

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended,".

ADMINISTRATIVE PROVISIONS

SEC. 9. (a) Contracts with tribal organizations pursuant to sections 5 and 6 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of August 24, 1935 (49 Stat. 793), as amended.

(b) Payments of any grants or under any contracts pursuant to section 5, 6, or 7 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this Act.

(c) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or with the consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 5, 6, or 7 of this Act with such organization as he finds necessary to carry out the purposes of this Act.

(d) The appropriate Secretary may, in his discretion, enter into contracts pursuant to sections 5 and 6 of this Act with tribal organizations, by negotiation, without advertising, for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items: *Provided*, That nothing in this Act shall be construed as authorizing or requiring a tribal organization to enter into an agreement, directly or indirectly, with a non-Indian party for the construction of buildings, roads, sidewalks, sewers, mains, or similar items without compliance with requirements of advertising and competitive bidding if the same would have been required had the agreement with the non-Indian party been entered into directly by the United States.

(e) In connection with any contract or grant made pursuant to section 5, 6, or 7 of this Act, the appropriate Secretary may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

SEC. 10. The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions of this Act.

SEC. 11. (a) The appropriate Secretary shall promulgate regulations relative to this Act no later than six months from the date of enactment of this Act.

(b) No later than sixty days prior to the promulgation of such regulations, the appropriate Secretary shall publish the proposed regulations in the Federal Register. No later than thirty days prior to the promulgation of such regulations, the appropriate Secretary shall provide, with adequate public notice, the opportunity for hearings on the proposed regulations, once published, to all interested persons.

SEC. 12. Nothing in this Act shall be construed as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

[H.R. 6372, 93d Cong., 1st sess.]

A BILL to provide for the assumption of the control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. For the purposes of this Act—

(a) "Indian tribe" and "Indian community" mean an Indian tribe, band, nation, or Alaska Native Community for which the Federal Government provides special programs and services because of its Indian identity. The terms may also include the reservation or other land area in which the tribe or community is located and tribally recognized communities within a reservation.

(b) "Indian tribal organization" includes the elected governing body of an Indian tribe or community. The term may also include legally established organizations which are controlled by one or more such bodies or which are controlled by a board of directors elected or selected by one or more such bodies.

(c) "Secretary" means the Secretary of the Interior or the Secretary of Health, Education, and Welfare, as appropriate.

(d) "Programs" and "services" include the local activities and undertakings of the Bureau of Indian Affairs of the Department of the Interior and the Indian health service program of the Public Health Service of the Department of Health, Education, and Welfare serving Indian communities and the related facilities, equipment, supplies, materials, and budget. Such other programs as may be designated by a Federal department or agency responsible for the administration thereof may also be transferred pursuant to this Act.

Sec. 2. (a) Notwithstanding any other provisions of law, if an Indian tribe or community, after consultations with the Secretary, requests that it be given the control or operation of a program or service administered by the Secretary, the Secretary shall, within one hundred and twenty days from such request or such later date as may be agreed to by the Secretary and the organization, transfer such control or operation to the Indian tribal organization: *Provided, however,* That no such transfer may be made unless the Secretary has determined that the tribes or communities involved have obtained general public liability insurance, motor vehicle insurance, and other appropriate insurance which shall provide coverage to the tribes or communities in amounts which shall be comparable to the minimum insurance coverage carried by other persons or organizations in the same general areas performing similar activities as determined by the Secretary. Such immunity to suit as a tribe or community which assumes control of a program pursuant to this section may have shall be waived with respect to suits arising out of its operation of that program but only to the extent of the coverage required by the Secretary. Any request made pursuant to this subsection must be accompanied by a plan for carrying out the program or service requested. A tribe or community assuming such control may enter into agreements to carry out all or any part of such program or service. A transfer under this subsection shall stipulate the retrocession procedures provided for in subsections (d) and (e) of this section which are designed to safeguard the residual trust responsibilities of the Federal Government. In the case where a requested program or service is serving the members of more than one Indian tribe or community, the requested transfer of such service or program must be approved by each tribe or community served by said program or service before any transfer shall be required under this Act.

(b) During the period preceding or immediately subsequent to any transfer required by this Act, the Secretary shall provide assistance, other than financial, on the request of the Indian tribal organization, to insure an orderly transfer of the control and operation of the program or service involved.

(c) For each fiscal year during which an Indian tribal organization engages in an activity pursuant to any program or service transferred to it under this Act, the Indian tribal organization shall submit a report to the Secretary including an accounting of the amounts and purposes for which Federal funds were expended and information on conduct of the program or service involved. The reports and records of such Indian tribal organizations with respect to such program or operation shall be subject to audit by the Secretary and the Comptroller General of the United States.

(d) Should an Indian tribe or community request retrocession to the Secretary of any program or service which was assumed by the Indian tribal organization under this Act, such retrocession shall be effective upon a date specified by the Secretary within one hundred and twenty days, of such indication or such later date as may be agreed to by the Secretary and the organization. Such retrocession will not prejudice the tribe's or community's right to again assume control of a service or program at a later date.

(e) In any case where the Secretary determines that any program or service assumed by an Indian tribal organization is being accomplished in a manner which involves (1) the violation of the rights or endangers the health, safety, or welfare of individuals served by such program or service, or (2) gross negligence or mismanagement in the handling or use of Federal funds provided to the organization pursuant to this Act, the Secretary may, under regulations prescribed by him, after providing notice and hearing to such Indian tribal organization, reassume control or operation of such program or service if he determines that the organization has not taken corrective action as prescribed by the Secretary. The Secretary may retain control of such program or service until such time as he is satisfied that the violation of rights, endangerment of health, safety, or welfare, or the gross negligence or mismanagement which necessitated the resumption has been corrected as indicated by the plan accompanying a request by an Indian tribal organization to again take control or operation of such program or service.

(f) In the allocation of available funds Indian tribal organizations that assume control or operation of programs or services under the provisions of this

Act, or retrocede control or operation to the Secretary, shall be treated in the same manner as they would have been if the control or operation had been maintained continuously by the Federal Government.

SEC. 3. The Secretary is authorized, upon the request of any Indian tribe, band, group, or community, to detail any civil service employee serving under a career or career-conditional appointment for a period of up to one hundred and eighty days to such Indian tribe, band, group, or community for the purpose of assisting such Indian tribe, band, group, or community in its control or operation of a program or service transferred to it pursuant to this Act. The Secretary may, upon a showing by an Indian tribe, band, group, or community of a need for an employee detailed pursuant to this section, extend such detail for a period not to exceed one hundred and eighty days.

SEC. 4. The Act of August 5, 1954 (68 Stat. 674), is amended by inserting a new section 9, as follows:

"SEC. 9. In accordance with section 214(d) of the Public Health Service Act (42 U.S.C. 215(d)), upon the request of any Indian tribe, band, group, or community, personnel of the service may be detailed by the Secretary for the purpose of assisting such Indian tribe, band, group, or community, in work related to the functions of the service."

SEC. 5. Nothing in this Act shall be interpreted as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indians.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 17, 1974.

Hon. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is our initial response to your request for the views of this Department on S. 1017, as passed by the Senate on April 1, 1974, "To promote maximum Indian participation in the government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of the human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; to train professionals in Indian education; to establish an Indian youth intern program; and for other purposes." Section 1 provides that the Act may be cited as the "Indian Self-Determination and Education Assistance Act." We shall transmit our views on Title II (the "Indian Education Assistance Act") in a separate letter.

TITLE I—INDIAN SELF-DETERMINATION ACT

We recommend enactment of Title I, subject to the comments and suggestions set out below.

Title I is apparently aimed at meeting the objectives of three Administration proposals:

H.R. 6372 ("To provide for the assumption of control and operation by Indian tribes and communities of certain programs and services provided for them by the Federal Government * * *" and includes authority for the detail of Federal employees to tribes).

H.R. 6374 (Amending the Johnson-O'Malley Act, 48 Stat. 596, 25 U.S.C. 452-454, to include Indian tribes as eligible contractors for the contracts authorized by that Act for the education, medical attention, agricultural assistance and social welfare of Indians).

H.R. 6853 (The "Federal Employee Indian Tribal Organization Transfer Act" which would provide that a Federal employee who transfers to tribal employment may, if the employee and the tribe so agree, retain certain civil service fringe benefits and to have certain rights to reemployment by the Federal agency he left when he transferred to tribal employment).

Section 102(a) of S. 1017 directs the Secretary of Interior "upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the [Johnson-O'Malley Act], any other program or portion thereof which the Secretary of Interior is authorized to administer for the benefit of Indians under the [Snyder Act, 25 U.S.C. 13], and any Act subsequent thereto * * *." This portion of section 102(a) achieves the objectives of our proposal in H.R. 6376 as described above. It also substantially achieves our basic objective in H.R. 6372 which is to give tribes the right to administer programs and services provided for them by the Federal Government as expressed by the President in his July 8, 1970 Indian message and most recently reaffirmed in his January 30, 1974, State of the Union message.

Section 102(a) continues with a provision authorizing the Secretary of Interior to—"initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory, (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization is deficient with respect to (1) equipment, (2) bookkeeping and accounting procedures, (3) substantive knowledge of the program to be contracted for, (4) community support for the contract, (5) adequately trained personnel, or (6) other necesary components of contract performance."

In contrast to the above language from section 102(a) of S. 1017 which gives the Secretary some limited discretion to refuse to contract, our proposal in H.R. 6372 would give the tribe the right to determine, after consultation with the Secretary, whether and when they are ready to assume control and operation of a program or activity. However, we endorse the S. 1017 provision as a reasonable and significant step forward.

To reflect the fact that a tribe may be able to remedy deficiencies found by the Secretary, we suggest that the words "is deficient" in the last proviso of section 102(a) be changed to "would be deficient in performance under the contract." The financing made available by the contract in some cases will enable the tribe or tribal organization to obtain the necessary equipment and personnel to operate the project or function contracted.

Section 102(b) requires that if the Secretary declines to contract, he must state his objections in writing to the Tribe, assist the tribe "to the extent practicable" in overcoming the objections, and provide the tribe with a hearing and appeal on the objections. We approve of the provision.

Section 102(c), which is comparable to a provision in section 2 of H.R. 6372, authorizes the Secretary to require a contracting tribe to obtain adequate liability insurance and provides that such insurance policy shall preclude the insurance carrier from using the tribe's sovereign immunity from suit as a defense against claims within the coverage and limits of the policy. For purposes of clarification and to correct an apparent inadvertent omission of language, we suggest that the provision be rewritten as follows:

"(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain such general public liability, motor vehicle, and other appropriate liability insurance coverage as he shall determine: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity to suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance."

Section 103 of S. 1017 provides the Secretary of Health, Education, and Welfare with direction and authority comparable to that given the Secretary of Interior in section 102. Section 103(c) should read the same (except for the title of the Secretary) as section 102(c) discussed above.

We are aware of the concerns of some Indian leaders (see April 1, 1974, Congressional Record, pages S 4818 and S 4819) that contracts under sections 102 and 103 could be entered into with Indian organizations not approved by the tribal government or governments whose members would be served under the contract. It should be noted that under these sections, the Secretaries are directed "upon the request of any Indian tribe to enter into a contract or contracts with any tribal organization of any such *Indian tribe*" (italic supplied).

The request of an "Indian tribe", as defined in section 4(b), for a contract must be made by the governing body of the tribe and the contract must be with a "tribal organization [which term is defined in section 4(c)] of any such Indian tribe * * *." We believe that the present language of sections 102 and 103 avoids the problem of contracting with organizations not approved by the tribal government where a contract would only involve a single tribe. However, where a contract would involve programs or activities serving several tribes (such as in the case of western Washington, Nevada, the New Mexico Pueblos, and other places where a Bureau of Indian Affairs Agency serves more than one tribe), the present language of the sections could result in one or more of the tribal governments requesting that a contract be entered into with a "tribal organization" when such contract or organization may be objectionable to other tribal governments whose members would be served under the contract. To remedy this possible problem, we suggest that language such as the following be added at the end of the section 4(c) definition of "tribal organization": "*Provided*, That, for the purposes of each specific request for a contract under section 102, 103, or 104 of this Act, the term includes only an organization which each Indian tribe to be served under such contract or grant either (1) has approved (or specified in their request) for such contract or grant, or (2) has not objected to within thirty days of notice from the appropriate Secretary of his receipt of the request for such contract or grant."

The above addition to section 4(c) is consistent with section 2(a) of H.R. 6372 which would require approval by each tribe involved of program or activity transfers.

It is inherent due to the previous relationship of Indian tribes and the BIA that a close working relationship will continue to exist in some cases where tribal contracts are approved under sections 102(a) and 103(a) of S. 1017. It should be recognized that such a relationship is unusual in Government contracting.

Sections 104 and 109 of S. 1017 provide (upon request of an Indian tribe) for grants to tribal organizations for planning, training, evaluation, and other activities specifically designed to make it possible for such organizations to enter into contracts under sections 102 and 103. We believe that this grant authority will be of great assistance in enabling tribes to prepare for contracting by, among other things, hiring or contracting for legal, technical, and other required skills. However, we believe that the phrase "and other activities specifically designed to make it possible for such tribal organization to enter into a contract or contracts" may unduly restrict our ability to provide assistance to those tribal governing bodies which need the most assistance in improving and developing their current tribal operations so that they would be able to assume new responsibilities under the contracts authorized in sections 102 and 103. For example, the section 104 authorization apparently would not permit us to grant funds to a tribe for the development of a basic tribal budgeting and accounting system unless the tribe could relate the system to a specific contract it wanted to enter into. Therefore, we believe that it is essential to the achievement of the purposes of Title I that the grant authority be broadened to include grants to strengthen or improve tribal government. This could be accomplished by combining and rewriting sections 104 and 109 in a manner such as follows:

"Sec. 104. (a) the Secretary of the Interior is authorized, upon the request of any Indian tribe, (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for:

(1) The strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems, the improvement of tribally funded programs or activities, or the development, construction, improvement, maintenance, preservation or operation of tribal facilities or resources);

(2) The planning, training, evaluation, or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 or 103 of this Act; or

(3) The acquisition of land in connection with items (1) and (2) above; *Provided*, That in the case of land within reservation boundaries or which adjoins on at least two sides land held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe.

"(b) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which such grants were made."

Our proposed section 104(b) is in line with section 7(e) of H.R. 9011 and would permit where necessary a tribal organization to undertake programs or activities with funding from more than one Federal grant program. Such a provision is especially needed because of the inability of many tribes to meet the local matching or non-Federal share requirements of some Federal grant programs.

Our proposed section 104 omits any reference to the Department of Health, Education, and Welfare as we understand that they will propose a separate provision relating to grants.

Section 105(a) of S. 1017 amends Title IV ("Mobility of Federal, State, and Local Employees") of the Intergovernmental Personnel Act of 1970 (5 U.S.C. 3371 *et seq.*) to include Indian tribes as local governments eligible for intergovernmental personnel assignments under that Act. This provision is very desirable because it treats Indian tribes the same as other local governments by permitting the assignment for up to two years (renewable for up to two additional years) of employees from any Federal agency to a tribe and similar assignments of tribal employees to any Federal agency. Such authority can be of great assistance in strengthening ongoing tribal government operations, preparing a tribe for contracting, and in operating under contracts, particularly in the early years of such contracts. In addition, in the case of those Bureau of Indian Affairs employees assigned to a program or activity prior to its being contracted to a tribe, such intergovernmental personnel assignments could provide continuity in the operation of contracted programs and activities and could give the Bureau and the employees a substantial opportunity to find other employment for any of such employees who are not likely to become tribal employees.

Consistent with the fact that sections 102, 103, and 104 of S. 1017 provide for contracts or grants to "tribal organizations", a term which is defined in section 4(c) to include more than just tribal governing bodies, we suggest that the amendment proposed in section 105(a) be expanded by changing the period to a comma and adding "and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act."

The provision in Section 105(a) more than satisfies the objective of section 8 of H.R. 6372 which would authorize the detail to tribes of Interior or HEW civil service employees for up to one year. It also substantially eliminates the need for the provision in section 2(5) of H.R. 6853 (the "Federal Employee Indian Tribal Organization Transfer Act") which under certain circumstances would give Bureau of Indian Affairs employes who transfer to tribal employment the right to reemployment by the Bureau within five years of such transfer if they chose to not remain employed by the tribe. However, section 105(a) of S. 1017 is seriously deficient in not permitting Bureau employees whose functions are contracted by a Tribe to transfer to tribal employment (if they and the tribe are agreeable) and still retain their civil service fringe benefits.

Many of the Bureau of Indian Affairs employees who are employed at the Bureau's agencies and schools are members of the tribes served by such agencies and schools. These employees are not likely to want to relocate to another Bureau installation or to another Federal agency away from their reservations. They also generally are not likely to want to give up their civil service benefits (i.e., retirement, compensation for injury, life insurance, and health benefits) by transferring to tribal employment. The fact that such Bureau employees would be so "harmed" by a tribe's contracting for the conduct of a program or activity is a serious impediment to tribes undertaking such contracting. We feel that it is essential to the achievement of the purposes of Title I that provision be made to alleviate this serious problem. Therefore, we recommend that section 105 be amended by adding the following new subsections:

"(d) Other statutes, Executive orders, or regulations, notwithstanding, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization on or before December 31, 1984, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

"(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 ("Compensation for Work Injuries") of Title 5, United States Code, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of Title 5, United States Code, as follows:

"(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

"(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

"(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") of Title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of Title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of Title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

"(3) To retain coverage, rights, and benefits under chapter 89 ("Health Insurance") of Title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefits Fund (section 8909 of Title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of Title 5, United States Code.

"(4) To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of Title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employees' Life Insurance Fund (section 8714 of Title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of Title 5, United States Code.

"(e) During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such subsection.

"(f) An employee who is employed by a tribal organization under subsection (d) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (d) before the date of his employment by such tribal organization. An employee who is employed by a tribal organization under subsection (d) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

"(g) For the purposes of subsections (d), (e), and (f) of this section, the term "employee" means an employee as defined in section 2105 of Title 5, United States Code.

"(h) The President may prescribe regulations necessary to carry out the provisions of subsections (d), (e), (f) and (g) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights and such other similar civil service employment rights as he finds appropriate."

Not only would the above addition to section 105 aid in overcoming a serious constraint to contracting by tribal organization, it would also better enable the tribal organization to recruit those Federal employees it wishes to hire in connection with its programs and activities under Title I of S. 1017.

Section 106(a) requires that contracts under the Act be in accordance with "all Federal contracting laws and regulations" except those requiring advertising competitive bidding and bonding. These exceptions are reasonable and necessary to the accomplishment of the purpose of the Act. In line with our proposed revision of section 104, the reference to "sections 102 and 103" should be changed to "sections 102, 103, and 104".

Section 106(b) authorizes payments with regard to any grants or contracts under sections 102, 103, and 104 to be "made in advance or by way of reimbursement and in such installments and on such conditions" as deemed necessary. Such advance payment authority is essential because many tribes do not have sufficient funds of their own to operate contracted programs or actvities on a reimbursable basis. However, we shall administer this authority so as to minimize the time elapsing between the date of each payment to a tribal organization and the necessary disbursement of such payment by the organization.

Section 106(c) authorizes contracts to be for terms of up to three years but stipulates that contracts with terms over one year are to be "subject to the availability of appropriations". It also authorizes annual renegotiation of contracts "to reflect factors, including but not limited to cost increases, beyond the control of a tribal organization." This discretionary authority provides for contracts over a year in length but as to years after the first year, the contract is more of a declaration of intent until sufficient appropriated funds have become available for the future years.

Section 106(c) also provides desirable limited authority to increase federal costs annually without an increase in benefit to the Federal Government where the cost increases are due to factors beyond the control of the tribal organization (such as an unanticipated increase in the cost of fuel).

Consistent with our proposed change in section 104, the reference in section 106(c) to "sections 102 and 103" should be to "sections 102, 103, and 104". The provisions of section 106(c) will aid in the accomplishment of the purposes of the Act.

Section 106(d) authorizes the revision or amendment of any grant or contract "as necessary to carry out the purposes of this title" and requires the appropriate Secretary to accept a tribal organization's request for retrocession (i.e., rescission of a contract and return of the operation) of any contracted program or activity. The provision is consistent with section 2(d) of H.R. 6372 which we proposed.

Section 106(e) authorizes the appropriate Secretary to permit a tribal organization to utilize existing "school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property" under the Secretary's jurisdiction. The phrase "or agency head" may be deleted as unnecessary and inconsistent with other provisions of the Act which only refer to the "Secretary" or "Secretaries".

The provision in section 106(e) is appropriate and is consistent with sections 1(d) and 2(a) of H.R. 6372.

Section 106(f) specifies that the contracts and grants under sections 102, 103, and 104 "may include provisions for the performance of personal services which would otherwise be performed by Federal employees" but prohibits "any contract which would impair [the Secretary's] ability to discharge his trust responsibilities to any Indian tribe or individuals." This self-explanatory provision is a desirable clarification of what functions can be contracted to a tribal organization. Clearly, we should not contract the function of approving transactions involving lands or funds held in trust by the Secretary since nothing in S. 1017 would alter the fact that these responsibilities remain with the United States. We are currently working with our Solicitor's Office to more completely and precisely define the functions which should not be contracted so that our regulations will be clear and specific on this point. It is generally intended that federal functions and certain trust related activities may be contracted to Indian tribes after this legislation is passed, although trust responsibilities will not be contracted out.

Consistent with our suggested revision of section 104, the portion of section 106(f) reading "The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104" should be revised to read "The grants and contracts pursuant to sections 102, 103 and 104 of this Act".

For purposes of clarification, we suggest that section 106(g) be rewritten in a manner such as follows:

"(g) Contracts and grants with tribal organizations pursuant to sections 102, 103, and 104 of this Act and the rules and regulations adopted by the Secretaries of Interior and of Health, Education, and Welfare pursuant to section 107 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants."

Section 107 provides for the adoption of the initial rules and regulations to implement Title I within certain time frames and requires consultation in their development with "national and regional Indian organizations", presentation of the proposed rules and regulations to the Congressional Committees on Interior and Insular Affairs, and their publication in the Federal Register for comment before final publication within ten months of enactment of S. 1017. We believe that we will be able to meet the specified time frames.

For purposes of clarification and to be consistent with section 107(a), we suggest that the word "each" be inserted after "shall" in each of paragraphs (1), (2), (3), and (4) of section 107(b) and after the word "are" in section 107(c).

Section 108 is similar to section 2(c) of H.R. 6372, which we proposed. The term "Indian tribal organization" should be changed to "tribal organization" to be consistent with the remainder of the title.

We are aware of the Comptroller General's recommendation concerning section 108 in his March 20, 1974 letter (see April 1, 1974 Congressional Record, pages S4819-S4821). A requirement similar to that proposed by the Comptroller General is set out in 41 U.S.C. 254(c) and we believe that it would be applicable to the contracts authorized in Title I of S. 1017 by virtue of the provision set out in 41 U.S.C. 250 and 41 U.S.C. 252(c)(15). However, we have no objection to including such a provision in S. 1017 and making it applicable to both titles in line with the Comptroller General's recommendation. We also believe that the Act should require that reports made by the organizations receiving grants or contracts under the Act should be made available to the Indian people served under such grants or contracts and that any funds advanced but not utilized in connection with a grant or contract should be returned to the Treasury. These recommendations could be incorporated by deleting the last sentence in section 108 and inserting a new section 5 before Title I as follows:

"Sec. 5. (a) Each recipient of Federal financial assistance from the Secretary of the Interior or the Secretary of Health, Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit."

"(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

"(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

"(d) Any funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States."

In place of the section 109 which we recommended be combined with section 104, we suggest the inclusion of the following new section 109 based on section 2(e) of H.R. 6372 and a similar provision recommended by the Comptroller General's March 20, 1974 letter:

"Sec. 109. Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act shall provide that in any case where the appropriate Secretary determines that the tribal organizations performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons, or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and hearing to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to health or safety and, in such cases, he shall hold a hearing on such action within 10 days thereof. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights, endangerment of health, safety, or welfare which necessitated the rescission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590) as amended (29 U.S.C. 651)."

Section 110 provides desirable assurance that nothing in the Act alters tribal sovereign immunity from suit or authorizes the termination of any trust responsibility to Indian people.

We have been asked whether the phrase "elected governing body of any Indian tribe" in the section 4(c) definition of "tribal organization" would exclude those Pueblos which select their leaders by their traditional method and not by what is commonly considered an election. We would not so construe the provision but to avoid any misunderstanding, we suggest that the word "elected" be replaced by "elected or otherwise recognized". This would enable us to determine the body which is authorized to act as the "governing body" for each specific tribal situation.

We recommend that the Act include provision for criminal penalties for embezzlement, willful misapplication, or fraud in connection with grants and contracts pursuant to Titles I and II. We suggest the addition of a new paragraph 6 before Title I as follows:

"Sec. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a grant, subgrant, contract, or subcontract pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both."

Construction activity is possible under S. 1017 and provision should be made for the payment of prevailing wage rates. Such a provision (with an incorrect citation) is included in section 206(f) but is applicable only to school construction under Part C of title II. We recommend that a new section 7 (based on section 14 of H.R. 9011) applicable to all of S. 1017 be inserted before title I as follows:

"Sec. 7. All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1931, is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c)."

We wish to reiterate our recommendation that Title I of S. 1017 be enacted, subject to the above comments and suggestions, because of its critical importance to achieving Indian Self-Determination, strengthening tribal governments, and improving the general welfare of Indian people.

The Office of Management and Budget has advised that the presentation of this report is in accord with the program of the President.

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

SECTION-BY-SECTION ANALYSIS OF S. 1017

Sec. 1 cites Act as "Indian Self-Determination and Education Assistance Act."

Sec. 2 contains a statement of congressional findings relative to Indian self-determination and education.

Sec. 3 contains a congressional declaration of policy committing the Congress to a policy of Indian self-determination with respect to Indian control and involvement in Federal services to Indians.

Sec. 4 contains definitions of Indian, Indian tribes, tribal organization, Secretary, school district, and State education agency.

TITLE I—THE INDIAN SELF-DETERMINATION ACT

Sec. 101 cites title as "Indian Self-Determination Act."

Sec. 102 (a) directs the Secretary of the Interior, at the request of an Indian tribe to contract with a tribal organization to carry out the services and programs provided to Indians through the Bureau of Indian Affairs. The Secretary must make certain determinations concerning the desirability of contracting and the ability of the tribe or tribal organization to carry out the contract.

Subsection (b) requires the Secretary to notify the tribe of his objections in the event he declines to enter into a requested contract and provide the tribe with an opportunity for a hearing.

Subsection (c) directs the Secretary to require a tribal contractor to obtain liability insurance provided that the insurance carrier may not set up as a defense, within the limits of the insurance coverage, the tribal sovereign immunity from suit; nor may it waive or otherwise limit tribal sovereign immunity beyond the coverage and limits of the insurance policy.

Sec. 103 directs the Secretary of Health, Education, and Welfare, at the request of an Indian tribe, to contract with tribal organizations to carry out services and programs provided to Indians through the Indian Health Service. The conditions and limitations imposed upon the Secretary of the Interior in section 102 are likewise imposed upon the Secretary of Health, Education, and Welfare.

Sec. 104 authorizes both Secretaries to make grants to Indian tribal organizations to assist them in entering into contracts pursuant to sections 102 and 103.

Sec. 105 amends the Intergovernmental Personnel Act of 1970, the Indian Health Service enabling Act of August 5, 1954; and the Military Selective Service Act of 1967 to permit the assigning of civil service or commissioned personnel to tribal contractors without loss of benefits under such acts.

Sec. 106 (a) provides that contracts made under this title with any tribal organization must comply with general Federal contracting laws, and regulations except that they may be negotiated without advertising and they need not comply with the provisions of the Act of August 24, 1935 (49 Stat. 793) which relates mainly to bonding requirements.

(b) provides that payments under any such contract or grant can be made in advance of performance on a reimbursement basis and that they can be made in installments and under such conditions as the Secretary deems necessary.

(c) authorizes the appropriate Secretary to enter into contracts for a period of up to three years provided there are available appropriations. These contracts may be renegotiated annually to reflect such factors as cost increases beyond the control of a tribe or tribal organization.

(d) provides that the appropriate Secretary can, with the consent of or upon the request of the tribal organization, revise or amend such contract or grant. The appropriate Secretary, however, is directed to grant retrocession upon the request of the tribe which originally requested the contract.

(e) authorizes the appropriate Secretary to permit a tribal organization, contracting under authority of this title, to use Federal buildings, equipment, and personal property such as hospitals, school buildings, vehicles, office equipment, etc.

(f) provides that the contracts or grants authorized by this title may include provision for the continuation of personal service contracts so long as the trust responsibility of the Federal Government is not impaired.

(g) provides that the Indian contractor must apply the same standards in the implementation of the contracts as would the Federal Government.

Sec. 107 authorizes the two Secretaries to do whatever else is necessary and to make such rules and regulations as are necessary to carry out the provisions of the title and provides for notice of the proposed promulgation of such rules and regulations.

Sec. 108 provides for the filing of a report with the Secretary by any tribe which requests a contract or grant pursuant to this title and that records of any contracting organization shall be subject to audit.

Sec. 109 authorizes appropriation of $3,000,000 for the Department of the Interior and $2,000,000 for the Department of HEW for the next three fiscal years each.

Sec. 110 preserves the sovereign immunity of Indian tribes and provides that the provisions of this title shall not affect the trust responsibility of the United States toward Indian people.

TITLE II.—THE INDIAN EDUCATION ASSISTANCE ACT

Sec. 201 cites title as "Indian Education Assistance Act."

Part A.—Education of Indians in public schools

Sec. 202 amends the Johnson-O'Malley Act of 1934 by adding four new sections. The amendments (1) require that a prospective contractor for education of Indians must submit a plan with the Secretary which meets certain minimum conditions; (2) requires a school district affected by a Johnson-O'Malley contract, where the school board is not composed of a majority of Indians, to cooperate and consult with an Indian Parents Committee elected from among their own numbers. Existing parent committee may be utilized for the purposes of the section; (3) authorizes Johnson-O'Malley funding for school districts attended by Indian students in Federal dormitories; and (4) authorizes appropriations of $65,000,000 for each of fiscal years 1975 and 1976.

Sec. 203 requires the Secretary of the Interior, after consulting with the Secretary of HEW and others competent in Indian education, to prepare and submit to the Congress no later than October 1, 1974, a report on the Johnson-O'Malley program, including an analysis of the allocation of funds among eligible school districts and the relationship of the program to other Federal programs providing Federal assistance to public schools educating Indian students.

Part B.—Preparation of professionals in Indian education

Sec. 204 authorizes the Secretary of the Interior to make grants to or contract with institutions of higher education or other organizations, including Indian tribes, to provide fellowships to carry out programs designed to develop or improve the qualification of professionals in Indian education and education-related services. Indians would be given a preference as beneficiaries of such fellowships or programs.

Sec. 205 authorizes to be appropriated $10,000,000 for the fiscal year of enactment of the Act and $15,000,000 for the next two succeeding years.

Part C.—School construction

Sec. 206 (a) authorizes Federal assistance for public school construction, acquisition or renovation to school districts on or near Indian reservation with Indian enrollment;

(b) directs the Secretary of the Interior to expend not less than 75% of such funds on projects which would be eligible for assistance under the impact aid provisions of P.L. 815. The Commissioner of Education is required to submit a list of such projects;

(c) requires Secretary to expend not more than 25% of such funds on former private schools which have been, or will be, taken over by Indian tribes;

(d) provides that contracts entered into for such assistance contain provisions which (1) insure educational standards compatible with those in similar non-Indian school districts and (2) guarantee compliance with local building codes;

(e) requires consultation with local Indian parent committees and tribal governing bodies prior to entering into such contracts;

(f) requires compliance with local prevailing wage rates under such contracts;

(g) authorizes the Secretary of the Interior to make an evaluation and report within 90 days of the end of the three year period following enactment on the operation and implementation of the program; and

(h) authorizes $35,000,000 for fiscal year ending June 30, 1974, and $35,000,000 for each of the four succeeding years. Fund would remain available until expended.

Part D.—Youth intern program

Sec. 207 provides for the establishment of a summer youth intern program for Indian students 16 years of age or older who are enrolled in secondary, vocational, or higher education programs.

Sec. 208 requires the Secretary to recognize community service fields which can provide opportunities for career related activities for Indian youth; provides that the Secretary determine number of eligible Indian youth for summer employment under (a); and provides for negotiations between the Secretary and the employer which will include job description, evaluation of progress, and formal consultation.

Sec. 209 establishes procedural requirements for the Secretary in administering the youth intern program related to wages, preservation of fulltime employees and benefits of employment.

Sec. 210 authorizes appropriations for Part D of $10,000,000 for the first fiscal year and $15,000,000 for each of the next two fiscal years.

Part E.—Education research and development

Sec. 211 authorizes educational research and development grants and contracts with universities, colleges and other public and non-profit private organizations; requires that the Secretary shall obtain the advice of educational specialists, including Indians, prior to making or entering into such grants or contracts; and requires that such grants or contracts not duplicate substantially other similar efforts.

Sec. 212 authorizes $2,000,000 for the first fiscal year and $3,000,000 for the next two succeeding years.

Part F.—Adult vocational, early childhood special and higher education

Sec. 213 requires the Secretary, after consultation with the Indians, to submit to the 94th Congress proposed programs in each of the areas contained in the Part heading.

Sec. 214 authorizes $750,000 for Part F.

Part G.—General provisions

Sec. 215 requires that the quality of educational services provided for Indian ~~students by affected~~ districts be comparable to those for non-Indian students before Federal funding under this title is available.

Sec. 216 limits to public agencies and tribal organizations except those bodies are permitted to subcontract with their individuals, organizations, or corporations.

Sec. 217 provides for Secretarial promulgation of regulation for this title.

Sec. 218 authorizes the Secretary to provide funds for the operation of former private schools over which the tribes assume authority. The Secretary is required to submit annual reports to the House and Senate Interior Committees on this program.

Sec. 219 provides that financial assistance to public schools for the education of Indians under this title shall be in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 17, 1974.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This further responds to your request for the views of this Department on S. 1017 (the "Indian Self-Determination and Education Assistance Act"). In a separate letter we provided you our views on Title I (the "Indian Self-Determination Act") of S. 1017.

TITLE II.—INDIAN EDUCATION ASSISTANCE ACT

Title II of S. 1017 as passed by the Senate on April 1, 1974, contains a number of new programs and authorities for the Secretary of the Interior organized as follows:

Part A—Education of Indians in Public Schools
Part B—Preparation of Professionals in Indian Education
Part C—[Public and Tribal] School Construction
Part D—Youth Intern Program
Part E—Educational Research and Development
Part F—Adult, Vocational, and Early Childhood Education
Part G—General Provisions

For the reasons set out below:

We recommend enactment of portions of Parts A and G subject to certain comments and suggestions.

We recommend against enactment of Parts B, C, D, E and F.

PART A.—EDUCATION OF INDIANS IN PUBLIC SCHOOLS

This part includes amendments to the Johnson-O'Malley Act (25 U.S.C. 452-454) and calls for a report to the Congress. We recommend enactment, subject to the comments and suggestions below, of section 202 except for the proposed new section 7 of the Johnson-O'Malley Act (JOM Act) which we recommend not be enacted. We also recommend against enactment of section 203.

Section 202 of S. 1017 would add three sections designed to improve the education activities assisted under the JOM Act by strengthening and clarifying our authority and requiring Indian involvement in the development of programs assisted under the Act. A fourth section would provide an unnecessary substitute JOM appropriation authorization authority or limitation for two years. Section 202 would make no change in the JOM Act with respect to contracts for "medical attention, agricultural assistance, and social welfare" which are also authorized by that Act.

It should be noted that the proposed new sections 4 and 7 would apply to JOM contracts involving private as well as public schools although the title of Part A refers only to public schools. The new section 4 of the JOM Act would require each prospective education contractor to submit an education plan which (1) contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and (2) assures that the contractor is capable of meeting such objectives. We note an apparent typographical error in that the word "contractor" should be used in place of "contract" the last time it appears in section 4. The Senate Report (No. 93-762) on S. 1017 indicates on page 22 that the "contractor" was the term intended.

The new section 5(a) of the JOM Act provides for the establishment of a "local committee" elected by the parents of Indian children enrolled in the schools of any school district affected by a JOM education contract if the membership of the school district's board does not include an Indian majority. Such committee is to "fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under the JOM contract and shall have such other duties, and be so structured, as the Secretary of Interior shall by regulation provide." The section also provides for the tribal governing body to determine which local committee shall be utilized in the event that such a committee has been established pursuant to a provision of the Indian Education Act (20 U.S.C. 241aa, dd) or for purposes of JOM contracts prior to enactment of S. 1017.

For purposes of clarification and technical accuracy we propose two amendments to the new section 5(a). In the first sentence the phrase "not composed of a majority of Indians" should be changed to "whose membership does not include an Indian majority". In the proviso in the second sentence insert "the Act of September 30, 1950 (64 Stat. 1100, Public Law 8- 874) as amended by section 411 of" after "section 305(b)(2)(B)(ii) of" and change "(86 Stat. 235)" to "(86 Stat. 235, 334 337, Public Law 92-318)".

The new section 5(b) of the JOM Act would authorize this Department to revoke any contract if the contractor fails to permit a local committee to perform its duties as provided in section 5(a).

The new section 6 of the JOM Act would provide specific discretionary authority for education contracts to include the "full per capita cost" of educating Indian students who are residing in Federal boarding facilities for the purpose of attending public schools not located in the State in which they normally reside. The Secretary would define "full per capita cost" under the authority provided in section 3 (25 U.S.C. 454) of the JOM Act.

The new section 7 would authorize the appropriation of $65 million for each of fiscal years 1975 and 1976 for the education of Indians pursuant to the JOM Act whether in public or private schools. The Senate Report (p. 22) states that the authorization would include financial support for the local committees established by the new section 5 of the JOM Act. The proposed appropriation authorization is not necessary as appropriations are authorized by the Snyder Act (25 U.S.C. 13). The proposed authorization would in effect be a $65 million limitation for only fiscal years 1975 and 1976 on a program which is budgeted for less than $26 million for fiscal year 1975. We recommend that this proposed section 7 not be added to the JOM Act.

We recommend against enactment of section 203 of S. 1017 because it is unnecessary.

Section 203 would require this Department (after consultation with the Department of Health, Education, and Welfare and others "competent" in the field of Indian education) to prepare and submit a report to the Congressional Committees on Interior and Insular Affairs by October 1, 1974 which is to include—

(a) a comprehensive analysis of the JOM Act as amended by S. 1017 including:

(1) factors determining the allocation of funds for special or supplemental education programs and for current operating expenses of the contractors;

(2) the relationship of the JOM Act to four other statutes providing financial assistance for the education of Indians:

(A) Title I of P.L. 81-874 as amended (20 U.S.C. Chapter 13, "Financial Assistance to Local Educational Agencies");

(B) P.L. 89-10, the Elementary and Secondary Education Act, as amended (20 U.S.C. Chapter 24, Subchapter I; Chapter 13, Subchapter II, Chapter 15, etc.);

(C) P.L. 92-318, the Indian Education Act (20 U.S.C. 241aa, etc.); and

(D) P.L. 81-815, as amended (20 U.S.C. Chapter 19, "School Construction in areas affected by Federal activities").

(b) a specific program to meet the special educational needs of Indian children who attend public schools, including at least:

(1) a plan for the equitable distribution of funds to meet such needs and, where necessary, to meet current operating expenses; and

(2) an estimate of the cost of the program.

(c) detailed legislative recommendations to implement the programs called for in (b).

(d) a specific program with legislative proposals to assist in the development and administration of Indian controlled community colleges.

The provisions of section 203 ~~do not need to be~~ enacted into law as we have sufficient authority to prepare such reports and we would do so whenever requested by your Committee or its Senate counterpart. We have already begun the work necessary to produce the report described in section 203 by October 1, 1974 and will provide it to both Committees.

PART B—PREPARATION OF PROFESSIONALS IN INDIAN EDUCATION

Part B would authorize financial assistance to universities and other organizations to provide fellowships and carry out programs and projects to train and improve qualifications of education personnel serving "Indians in public, private and totally federally funded schools."

We recommend that Part B not be enacted because it duplicates existing authority the Interior Department has under the Snyder Act (25 U.S.C. 13) for such activities as our scholarship program which assists Indian students in education and other fields. We defer to the Department of Health, Education, and Welfare as to the apparent duplication of Part B and the specific authority provided that Department such as in section 810(a)(3) and (d) of P.L. 89-10 (the

Elementary and Secondary Education") as amended (20 U.S.C. 887c(a)(3) and (4)) by section 421(a) of the Indian Education Act.

PART C—[PUBLIC AND TRIBAL] SCHOOL CONSTRUCTION

We recommend against enactment of Part C because we do not believe that the Department of Interior should undertake a public school construction assistance program which would duplicate the program administered by the Department of Health, Education, and Welfare under Public Law 81-815.

We defer to the Department of Health, Education, and Welfare as to the operation, funding, or other aspects of the Public Law 81-815 program and its relation to Part C.

PART D—YOUTH INTERN PROGRAM

Part D would authorize the Secretary of Interior to establish an Indian youth intern program "to provide meaningful and career-related work opportunities" for Indian youth who are not enrolled in educational programs during the summer months.

We recommend against enactment of Part D because there is authority for such a program under the Snyder Act (25 U.S.C. 13) or for those 18 years or older, under the Public Law 84-959, as amended (25 U.S.C. 309) vocational and on-the-job training programs administered by this Department.

PART E—EDUCATIONAL RESEARCH AND DEVELOPMENT

Part E would authorize grants to or contracts with universities, colleges, nonprofit organizations, or individuals "for research, surveys, and demonstrations in the field of Indian education" and for the dissemination of the information derived.

We recommend that Part E not be enacted because it duplicates authority we have under the Snyder Act (25 U.S.C. 13) to accomplish the same purposes by contract.

PART F—ADULT, VOCATIONAL, AND EARLY CHILDHOOD EDUCATION

Section 213 would require the Secretary of Interior to present a report to the 94th Congress by March 1975 which is to include a number of education and training program proposals and an assessment of the capability of the Federal Government to measure effectively and accurately the educational progress and achievement of Indian people.

We recommend against enactment of Part F because the development and evolution of such programs is a continuing responsibility of ours and is currently authorized under the Snyder Act (25 U.S.C. 13).

PART G—GENERAL PROVISIONS

Section 215 would prohibit any Title II funds going to any school district unless this Department is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in such district's schools are at least equal to that provided all other students from resources other than Title II of S. 1017. A similar provision applicable only to Part C (School Construction) is included in section 206(d). We have no objection to section 215 which is consistent with section 3 (25 U.S.C. 454) of the Johnson-O'Malley Act.

Section 216 would require any funds made available under Title II of S. 1017 (other than under Part B, "Preparation of Professionals in Indian Education") be made available directly to "public agencies and Indian tribes, institutions, and organizations" but specifically permits those recipients to "contract for necessary services with any appropriate individual, organization, or corporation". We have no objection to this section but for clarification and consistence in terminology we suggest that the phrase "public agencies and Indian tribes, institutions, and organizations" be changed to "public agencies and tribal organizations" since section 4(c) defines "tribal organization" to include tribal governing bodies and certain other organizations. If the reference to "Indian * * * institutions" is intended to mean institutions not included in the definition of "tribal organization", that fact should be clarified and such institutions more precisely identified.

Section 217 provides for the development of rules and regulations to implement Title II in a manner similar to that specified for Title I in section 107 and discussed in our report on Title I. We have no objection to the provision, however the Committee may wish to consider avoiding unnecessary repetition by combining sections 107 and 217 into a single section applicable to both titles.

We do not recommend enactment of section 218 as passed by the Senate.

Section 218 provides that the "Secretary is authorized and directed to provide funds, pursuant to [S. 1017; the Johnson-O'Malley Act;] or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school" and requires an annual report to the Congress on such assistance. We are already contracting to provide financial assistance for the operation of such schools. However, we do not now have authority such as proposed in section 206(c) to assist the construction, alteration, or the improvement of tribal or other non-Federal facilities.

As written, section 218 apparently seeks to prohibit any discretion on this Department's part as to the provision of the financial assistance authorized. We consider such a requirement seriously wrong because it could require Federal assistance to the operation and, in connection with section 206(c), even the construction of schools or related facilities which could divert students from existing adequate public or Bureau of Indian Affairs (BIA) schools. In addition, the lack of any standards as to the amount of assistance that the Department would be "directed" to furnish could lead to disputes and litigation.

However, there are cases where Indian children are now being educated in sectarian or tribal schools. In some of these cases adequate public or BIA school facilities are not available in the locality, and the closing of the sectarian or tribal schools would not only be distressful to the parents and children involved but would result in the children being sent to a BIA boarding school. Therefore, to avoid such circumstances, this Department should have discretionary authority to provide financial assistance to tribal schools which were formerly private schools. In line with the provisions set out in 25 U.S.C. 278 and the constitutional problems that would be involved, we do not believe that assistance can be extended to sectarian schools.

In the case of assistance for construction, alteration, or improvement, we would limit our assistance to temporary measures necessary to remedy unsafe or unhealthy conditions where existing public or BIA school facilities in the locality need to be improved or enlarged to accommodate the transfer of such students. Where existing public or BIA school facilities are adequate to accommodate the students in a tribal school we would provide no assistance for construction, alteration, improvement or for any operational costs which would not be costs borne by the Federal government if the students attended public or BIA schools in the locality.

We also believe that tribal schools aided by Federal funds should be owned by such tribes rather than only controlled and managed by them as provided in section 218.

We recommend that section 218 be enacted if it is rewritten in a manner such as follows:

"Sec. 218. The Secretary is authorized to enter into contracts to provide assistance from funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208) or the Act of April 16, 1934 (48 Stat. 596), as amended, to any tribal organization which owns, controls, and manages a previously private school and related facilities to assist in the operation, alteration, or improvement of such school and related facilities: *Provided*, That such assistance shall be in such amounts and subject to such terms and conditions as the Secretary shall determine in consultation with the tribal organization involved."

It should be noted that under section 102 of S. 1017, a tribe may contract for the operation of Bureau schools serving their children and that section 202 assures Indian involvement in the public school activities assisted under the Johnson-O'Malley Act.

Section 219 declares that assistance provided under S. 1017 for the education of Indian children in public schools is in addition and supplemental to assistance provided under the Indian Education Act. We recommend against enactment of this section because we believe that such assistance could be duplicative.

The Office of Management and Budget has advised that there is no objection to the presentations of this report from the standpoint of the Administration's programs.

Sincerely yours,

JOHN H. KYL,
Assistant Secretary of the Interior.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 20, 1974.

Hon. JAMES A. HALEY,
*Chairman, Committee on Interior and Insular Affairs,
House of Representatives.*

DEAR MR. CHAIRMAN: We are providing you with our comments on S. 1017, 93d Congress, which, if enacted, would be cited as the "Indian Self-Determination and Education Reform Act," as reported by the Senate Committee on Interior and Insular Affairs on February 7, 1974. Your Committee has scheduled hearings on this and similar bills for later this month. We are enclosing for your information a copy of our report of May 28, 1970, to the Congress entitled "Administration of Program for Aid to Public School Education of Indian Children Being Improved," B-161468.

Section 102 directs the Secretary of the Interior, upon request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, which the Secretary is authorized to administer for the benefit of Indians. The section provides that the Secretary may initially decline to enter into any contract requested by an Indian tribe under certain circumstances. Section 103 contains a similar contracting provision for programs administered by the Secretary of Health, Education, and Welfare.

We noted that sections 102 and 103 do not provide for reassumption of the administration of programs by the respective Secretaries if it is determined that the programs assumed by an Indian tribal organization are being administered in a manner which involves the violation of the rights or endangers the health, safety, or welfare of individuals served by such programs, or of the general public, or that there is gross negligence or mismanagement in tribal organizations' handling of Federal funds or the operations of the programs. We suggest, therefore, that language similar to the following be included in a new section of the bill:

"In any case when the appropriate Secretary subsequently determines that a program or service assumed by an Indian tribal organization is being accomplished in a manner which involved (1) the violation of the rights or endangers the health, safety, or welfare of individuals served by such program or service, or (2) gross negligence or mismanagement in the handling or use of Federal funds provided to the organization pursuant to this Act, the appropriate Secretary may, under regulations prescribed by him and after providing notice and hearing to such Indian tribal organization, reassume control or operation of such program or service if he determines that the organization has not taken corrective action as prescribed by the appropriate Secretary. The appropriate Secretary may retain control of such program or service until such time as he is satisfied that the violations of rights, endangerment of health, safety, or welfare, or the gross negligence or mismanagement which necessitated the reassumption has been corrected."

Section 106(b) would provide that payments of any grants or under any contracts pursuant to section 102, 103, or 104 may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of the bill. We suggest that the Committee consider revising section 106(b) to provide that such payments be made consistently with applicable Treasury regulations so as to minimize the time elapsing between the date of payment and the disbursement thereof by the State in order to save the Government interest costs. See section 203 of the Intergovernmental Cooperation Act of 1968, Pub. L. 90-577, 82 Stat. 1101, and Treasury Department Circular No. 175 (Third Revision), 1973, 31 CFR 205.

Section 106(f) provides that contracts authorized under sections 102 and 103 and grants pursuant to section 104 may include provisions for the performance of personal services which would otherwise be performed by Federal employees: provided, that *the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individual.* (Italic added.) Also, sec. 111 provides that nothing in title I shall be construed as authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people. We believe that the ramifications of these sections are very broad and might result in serious misunderstandings and problems in the future.

In our audits of Indian affairs activities, we noted that the Federal Government's specific trust responsibilities were not defined clearly in legislation or in administrative regulations and that Bureau of Indian Affairs officials often had difficulty in determining where the trust responsibilities end and the concept of Indian self-determination begins. This situation has led to disagreements between the Bureau and the tribes as to the duties and responsibilities of each party and has resulted in charges that the Bureau has abrogated its trust responsibilities. We noted also that, in the past, Indian tribes that had planned, conducted, and administered Federal Indian programs under existing statutory authority had sometimes made decisions which proved to be unsatisfactory. In several cases, the tribes retroceded the administration of the programs to the Bureau and brought suit against the Secretary for abrogation of the trust responsibility.

The Committee may wish to consider the need for revising section 106(f) to clarify the Federal Government's trust responsibilities to the Indian people and to define the duties and responsibilities of Indian tribes under the self-determination program. The Committee may also wish to consider amending section 111 of the bill to provide that Indian tribes shall bear the responsibility for their actions and decisions in administering Federal Indian programs and to clarify the conditions when, if at all, the Secretary shall be held accountable for such actions and decisions under the trust responsibility concept.

Section 107(a) provides, among other things, that prior to the issuance of rules and regulations, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall consult with national and regional Indian organizations; present the proposed rules and regulations to the Interior and Insular Affairs Committees of the Senate and House of Representatives; and publish the proposals in the Federal Register for the purpose of receiving comments from interested parties. Section 107(b) provides that prior to revision or amendment of any rules or regulations promulgated pursuant to subsection (a), the respective Secretary or Secretaries shall consult with national and regional Indian organizations and publish proposed revisions in the Federal Register not less than sixty days prior to the effective date of the proposed amendments or revisions in order to receive comments from interested parties. The Committee may wish to consider if proposed revisions or amendments should also be submitted to the respective Interior and Insular Affairs Committees.

The first sentence of section 108 provides that an Indian tribal organization receiving or expending funds pursuant to a contract or grant under this title shall submit a report to the appropriate Secretary. The second sentence provides that the reports and records of the organization with respect to such contract or grant shall be subject to audit by the appropriate Secretary and the Comptroller General. To assure that the goals of the second sentence are achieved and that the appropriate Secretary and the Comptroller General have sufficient authority to review the activities carried out pursuant to this title, we suggest that the second sentence be deleted and that the following new subsections to section 108 be inserted:

"Each recipient of Federal assistance under this Act pursuant to grants, subgrants, contracts, subcontracts, loans or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

"The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, loans or other arrangements referred to in the preceding subsection."

Part A of title II of the bill, Education of Indians in Public Schools, would replace the educational programs authorized in the Johnson-O'Malley Act of 1934 (48 Stat. 596), as amended. Section 203(a) provides a formula for the distribution of Federal funds for the education of federally recognized Indian children in the public schools of the States. Section 203(a) also provides that additional funds in an amount not less than 20 percent of the amount determined by the formula shall be provided to the affected school districts for a variety of special programs designed to meet the special needs of Indian pupils in public schools.

In our May 28, 1970, report to the Congress, we pointed out that the Johnson-O'Malley program was based on the concept that education is a responsibility of the State and that Indian children from a reservation are citizens of the State where the reservation is situated and are entitled to the same public education as is provided to other children in that State. We pointed out also that the Johnson-O'Malley program was considered to be a supplemental program in that funds were to be limited to school districts which, after exhausting all other sources of revenue including other Federal aid, are unable to operate schools at adequate State standards.

In our report we stated that we had found that (1) funds had been provided to counties and school districts where needs may not have existed and the funds may not have benefited Indian children from reservations; (2) the Federal government had paid the full cost of educating Indian children living in Federal dormitories while attending public schools, even though most of the children attending the schools were residents of the State; (3) no reduction had been made for the State aid received by the school districts for educating Indian children participating in the dormitory program; and (4) the distribution of Federal funds to the school districts appeared to have been improper or there was no assurance that the funds had been used for their intended purpose. We recommended that the Secretary of the Interior require the Bureau of Indian Affairs to furnish program funds on the basis of demonstrated financial need, encourage State and local participation in the cost of educating Indian children who live in Federal dormitories, and implement additional methods of supervision and control over the distribution and use of funds by the school districts.

We believe that the formula provided for in section 203(e) of the bill will assist in correcting some of the problems set forth in our report and result in a more equitable distribution of Federal Indian education funds to those States and school districts with the greatest needs. In our opinion, however, section 203(a) will not insure that the additional funds provided for special programs designed to meet the special needs of Indian pupils are used for the purposes intended. Therefore, the Committee may wish to consider revising section 203(a) to provide that States and school districts receiving funds for special education programs under this section shall report annually to the Secretary of the Interior on the uses made of such funds and on how the actual use of the funds compares with the planned use of the funds set forth in the education plan approved by the Secretary. This report will assist the Secretary in implementing our recommendation, *infra*., that he be required to perform periodic program evaluations.

Sec. 203([illegible]) would require the Secretary to enter into a contract with the State education agency of any State the public education of which is affected by a contract or contracts pursuant to section 202, regardless of who the contractor or contractors may be, to provide the professional and support staff and administrative services necessary to assist local school districts affected by such contract or contracts in implementing the purposes of title II. We suggest that the Committee consider revising this provision so as to authorize rather than require such contracts because some contractors under this title may be competent and qualified and, therefore, would not need technical assistance from the State education agencies.

Sec. 212(7) would provide that, in establishing and carrying out the Indian youth intern program, the Secretary shall take such action as may be necessary to assure that there shall be one supervisor for each twenty Indian youth interns during their period of employment. The section does not, however, set forth the purpose or duties of a supervisor or indicate by whom the supervisor is to be employed. The Committee may wish to consider revising section 212(7) to clarify these matters.

We noted that title II of the bill contains no provisions to require the recipients of Federal funds to maintain adequate records or to authorize the Secretary of the Interior and the Comptroller General, or their duly authorized representatives, to have access for the purposes of audit and examination to any relevant books, documents, papers, and records of the recipients of Federal funds. We suggest, therefore, that language similar to that suggested with respect to section 108 be included in title II.

We noted also that the bill does not specifically provide for an evaluation of the program by the Secretaries of the Interior and Health, Education, and Welfare. It is our view that program evaluation is a fundamental part of effective program administration and that the responsibility for evaluations should rest initially upon the responsible agencies. In line with this concept, we believe the Congress should attempt to specify the kinds of information and tests which will enable it to better assess how well programs are working and whether alternative approaches may offer greater promise. We will be happy to work with the Committee in developing specific language if you wish.

We are also providing our comments on the bill to the Chairman of the Senate Interior and Insular Affairs Committee.

Sincerely yours,

R. F. KELLER,
Deputy Comptroller General
of the United States.

Enclosure.

Mr. MEEDS. Tribal sovereignty, the power of self-government, was first recognized in concept by the U.S. Supreme Court in *Worcester* v. *Georgia*—6 Pet. 515 (1832).

While it was clearly recognized that the power to abolish, limit, or modify the original tribal sovereignty was the sole prerogative of the Congress and, indeed, while the Congress has steadily eroded that original sovereignty, extra legal administrative action had all but destroyed that right by the early 1920's.

The growth of the administrative power of the Bureau of Indian Affairs, first under the Department of War and later under the Department of the Interior, on Indian reservation had effectively destroyed existing tribal forms of government. Officials of the BIA assumed the role of colonial administrators on the reservations and administered programs and services on the reservations under a policy which later became known as "paternalism."

It became clear in the 1920's that this policy was not effectively preparing Indian tribes and people with the necessary skills to function in the non-Indian society. The Meriam Report of 1928 reinforced this conclusion and made recommendation for administrative and legislative action to move away from paternalism to eventual Indian self-determination and self-government.

In response to these findings, the Congress enacted the Indian Reorganization Act of 1934. Some have viewed this legislation as conferring powers of self-government on the tribes and imposing an outside form of government to implement these "new" powers. The legal effect of the act, however, was to restrict the extra legal administrative curtailment of tribal sovereignty and to facilitate tribal government forms to implement those sovereign powers which had not been specifically limited by the Congress and, in some areas, to define these powers.

While the Indian "new deal" legislation of the 1930's brought some measure of Indian control and self-government, it fell far short of the current administration policy of "Indian Self-Determination without Termination." The Bureau of Indian Affairs continued to administer and operate federally funded programs and services on the reservation and the tribes were given little opportunity to set priorities and to become involved in the policy and decisionmaking functions of the BIA.

After a brief, though disastrous experiment with the so-called "termination" policy in the 1950's which sought to totally terminate the Federal-Indian relationship, both the Congress and the Executive began to articulate a policy of Indian control and self determination consistent with the maintenance of the Federal trust responsibility and the unique Federal-Indian relationship.

In an attempt to implement this new policy, the administration resurrected two ancient Indian laws. Under the so-called Buy Indian Act—section 23 of the act of June 25, 1910—which authorized the Secretary to employ Indian labor and purchase products of Indian industry, the administration sought to contract out much of its BIA programs and services to the Indian tribes. Under an 1834 law, the administration sought to confer authority on Indian tribes to direct the employment of Federal employees in the Indian service. These laws have proven to be legally and practically ineffective in successfully implementing the new policy.

Title I of S. 1017 confers specific authority on the Secretary of the Interior and the Secretary of Health, Education, and Welfare to contract the federally funded programs and services of the Bureau of Indian Affairs and the Indian Health Service, respectively, to Indian tribes or tribal organizations. The provisions of the title spell out the conditions of the contracting authority and the rights of the parties under such contracts.

In addition, title II of S. 1017 makes basic reform in the Federal programs for assistance to public schools educating Indian students which are administered by the Bureau of Indian Affairs and provides specific reforms in the BIA's educational program. Part A of title II amends the Johnson O'Malley Act, providing for BIA assistance to public schools enrolling Indian students, by, inter alia, requiring greater participation of Indian tribes and parents with respect to such contracts. This is consistent with the provisions and intent of title II.

Title II also authorizes new programs of BIA assistance to public schools for school construction; training programs for professionals in Indian education; Indian student intern programs; and educational research and development.

We have with us as our first witness this morning the Commissioner of Indian Affairs, the Honorable Morris Thompson. Morris, glad to see you back so soon. We both have been busy.

If you have a written statement, you may read it into the record or summarize it and we will insert it into the record.

STATEMENT OF HON. MORRIS THOMPSON, COMMISSIONER, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF INTERIOR, ACCOMPANIED BY RALPH REESER, LEGISLATIVE OFFICER, BIA; ABE ZUNI, ACTING DIRECTOR OF ADMINISTRATION, BIA; DON ASBRA, DIRECTOR OF CONTRACTING SERVICING, BIA; DR. WILLIAM BENHAM, ACTING DIRECTOR OF EDUCATION PROGRAMS; BIA; AND WILLIAM LAY, DIRECTOR OF PUBLIC SCHOOL APPROPRIATIONS, BIA

Mr. THOMPSON. Mr. Chairman, I have on my left Mr. Don Asbra, Director of Contracting Servicing, and on my immediate right, Mr. Ralph Reeser, Legislative Officer, and on his right, Mr. Abe Zuni, Acting Director of Administration.

Mr. MEEDS. Pardon me just 1 minute, Mr. Thompson. The gentleman from Ohio is recognized.

Mr. REGULA. Mr. Chairman, I just want to insert a statement in the record.

Mr. MEEDS. Without objection the statement of the ranking minority member will be inserted in the record.

[The statement of Congressman Regula follows:]

STATEMENT OF HON. RALPH S. REGULA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Thank you, Mr. Chairman. The legislation on which we are about to hear testimony represents a further effort to implement the policy of Indian self-determination proposed by President Nixon in 1970.

During the past year this committee has worked hard to pass legislation that will build a solid legislative framework to carry out this policy. Parts of that framework we have seen signed into law include the Indian Financing Act, the Indian Judgment Distribution Act and the Menominee Restoration Act. The Menominee bill was especially significant as it constituted a direct reversal of the termination policy begun in the 1950's.

The bill before us is designed to promote Indian self-determination in two distinct but related areas: Federally funded Indian services and Indian education. It proposes a vehicle by which Indian people can eventually assume full control over programs and services administered by the Bureau of Indian Affairs and the Indian Health Service. It further provides for increased Indian participation in the planning and conduct of Indian educational programs, and for new programs to upgrade the quality of Indian education.

I believe there is no question that this committee agrees with the general purposes of this bill. Its particulars, however, present important questions concerning Indian policy priorities and the expenditure of large sums of taxpayers' dollars. These questions and the answers proposed in S.1017 deserve thorough consideration by the members of this committee and the witnesses testifying here today.

Mr. MEEDS. Please proceed.

Mr. THOMPSON. Mr. Chairman, it is both a pleasure and a challenge to testify this morning. A pleasure because S. 1017 as passed by the Senate contains the essential authority which the administration has long sought to implement its philosophy of Indian self-determination. A challenge because the bill is exceedingly complex, because it deals with the additional subject of Indian education, and because we have several amendments to recommend. In order to keep my testimony manageable, I propose to discuss first title I of the bill, the Indian Self-Determination Act, and then, if the committee agrees, to answer questions on its provisions. I would then proceed to discuss title II, the Indian Education Assistance Act, and to answer questions on that title if that is all right with the committee.

Title I—Indian Self-Determination Act. This title is an amalgamation of three proposals for Indian self-determination suggested by President Nixon in his 1970 Indian message: a proposal providing for Indians to assume control of Federal programs established for their benefit; a proposal whereby Federal employees who accompanied programs transferred to the tribes could retain their civil service benefits; and a proposal to amend the Johnson-O'Malley Act by adding Indian tribes themselves to the list of parties with whom the Secretary of the Interior can contract out the education of Indians.

Title I takes a somewhat different approach to the goal of enabling Indians to have control of programs directed toward their well-being from that of the administration proposal. Rather than provide for outright transfer of programs to the tribes, section 102(a) of S. 1017 directs the Secretaries of Interior and Health, Education, and Welfare to enter into contracts with tribes whereby they would plan, conduct, and administer Federal Indian programs. We believe that the concept of effectuating self-determination via contracts is reasonable and could provide desirable flexibility in attaining Indian involvement. We note that section 102(a) allows the appropriate Secretary some discretion to decline to contract with a tribe, whereas the administration proposal would give the tribe an unqualified right to assume control of Indian programs. We believe that the procedural safeguards built into section 102(a) will insure that it does not inhibit self-determination, and on that basis we offer no objection to the discretion it would lodge with the two Secretaries.

In our report on S. 1017, we recommend several amendments which we believe would improve the contracting provisions of title I. Perhaps the most important of these amendments centers on section 106(d).

In permitting the Secretaries to revise contracts with the consent of the tribes, this subsection envisions that some tribes may find themselves unable to carry out a program and may wish to retrocede it to the Federal Government. We prefer the more explicit administration retrocession provision to this indirect approach. We have woven our provision into the contractual method of S. 1017 as a proposed new section 109, as set out again in our report. This section would spell out that the appropriate Secretary would rescind a contract in any case where he found that a tribe was operating a program so as to endanger the health, safety, or welfare of any persons or so as to demonstrate gross fiscal negligence or mismanagement.

I might add we are primarily referring to contracts with HEW in the health field.

Title I also differs from the administration proposal in authorizing the appropriate Secretary to make grants to tribes for planning, training, and other activities as a preliminary to contracting with the tribes. In view of the fact that at present many tribes are not able to meet Federal contracting standards, we consider this authority a welcome addition to the bill. Indeed, we suggest that such authority be enlarged to aid tribal operations—such as accounting systems—which may not be specifically related to a given contract. In this way, the Department of the Interior would obtain something akin to the general granting authority embodied in another administration proposal, the Indian Tribal Government Grant Act, H.R. 9011.

Section 105(a) of S. 1017 amends the Intergovernmental Personnel Act of 1970 to permit assignment of any Federal employee to Indian tribes for up to 2 years. This provision more than satisfies the parallel objective of the administration proposal, which would authorize the detail of Interior and HEW employees to tribes for up to 1 year. However, we believe that one aspect of the administration proposal—the retention of civil service benefits by Federal employees who transfer to tribal employment—should be retained. Because such a provision eliminates a major disincentive to such transfers, we believe that its presence in the bill is essential to the achievement of the purposes of title I and would enhance the long-term success of tribally run programs.

Mr. Chairman, our legislative report on title I contains several other suggested amendments. Although we consider all of them important, it would take too much of the committee's time to discuss them all in this statement. I would propose instead to discuss the ones on which the committee prefers to focus. But I want to stress that, subject to these comments and suggestions, I strongly recommend enactment of this title. I believe that it goes a long way toward meeting the President's objective of enabling Indians to exert more control over their own lives and that its enactment will be of great benefit to the American Indian people.

With your approval, we would take questions now on title I, or would you prefer that we proceed into title II? Whatever is the pleasure of the committee, we would be pleased to follow.

Mr. MEEDS. Please continue so we will have all of your testimony first.

Mr. THOMPSON. Title II, Indian Education Assistance Act.

This title consists of several parts, each dealing with a separate aspect of Indian education. I will discuss each of these parts in turn.

Part A, education of Indians in public schools, would amend the Johnson-O'Malley Act to insure greater Indian involvement in the development of its programs. It should be noted that the amendments in this part are distinct from the administration's proposed amendment to that act, which would have enabled Indians to be parties to the act's education contracts. The general contracting authority provided by title I of S. 1017 makes the administration Johnson-O'Malley proposal unnecessary. This part would achieve such involvement by adding new sections 4 and 5 to the act. Briefly, these sections would: (1) require would-be contractors to submit plans to the Secretary of the Interior which showed adequate attentiveness to the educational needs of Indian children; and (2) provide that where a school board has a majority of non-Indian members, an elected "local committee" of Indian parents would have the power to disapprove Johnson-O'Malley contracts between the school district and the United States. With some technical modifications, we recommend enactment of this new section.

We recommend against enactment of a proposed new section 7 which would authorize the appropriation of no more than $65 million for purposes of the Johnson-O'Malley Act during fiscal 1975 and 1976. We would also recommend against enactment of section 203 of part A, which would require this Department to submit an education report to the Congress. This section is unnecessary, we feel, as we have ample authority to prepare such a report and we are currently doing so, with the report to be submitted to the committee by October 1, 1974.

Part B of title II would authorize financial assistance to universities and other institutions for the purpose of improving the qualifications of persons engaged in Indian education. We recommend against enactment of this part because it duplicates, we feel, existing authority under the Snyder Act. We defer to the Department of Health, Education, and Welfare as to whether part B also duplicates some of its authority.

Part C would authorize the Secretary of the Interior to embark on a program of school construction for the education of Indians in public schools. We recommend against the involvement of this Department in such construction, which is a function of the Department of Health, Education, and Welfare. As to other aspects of part C, we defer to the Department of HEW.

Part D would establish an intern program to provide career-related summer employment for Indian youth. Since there is authority for such a program under the Snyder Act, we recommend against enactment of this part. Under our current authority we had some 1,600 Indian youths as full or part-time intern-employees during fiscal year 1973.

Part E would authorize grants and contracts with appropriate institutions for research and development in the field of Indian education. Since it would duplicate Snyder Act authority, we recommend against enactment of this part. We currently expend approximately $300,000 per year on such activities.

Part F would direct the Secretary of the Interior to present to the 94th Congress various programs and analyses concerning the education of Indian people. The development of such programs is a continuing responsibility of ours, and we would draw upon such reports as the committee may request.

Part G contains general provisions applicable to the entire title. Generally, we have no objection to these provisions. However, we recommend that one of them, section 218, not be enacted as passed by the Senate. This section would direct the Secretary to provide funds to tribes which control previously private schools. We believe that this authority should be discretionary and recommend that section 218 be amended accordingly.

Mr. Chairman, this concludes my statement.

Mr. MEEDS. Thank you, Mr. Commissioner. Am I speaking loudly enough so that everybody can hear me in this rather large room here?

Mr. Commissioner, I am struck by the beginning of your statement where you say, "contains the essential authority which the administration has long sought to implement its philosophy of Indian self-determination."

I don't say this for you to take personally, but I must say I have been a little bit concerned about continual statements from spokesmen from the administration, including the President himself, in talking about the long-sought programs of the administration to carry out the process of self-determination. I think there has been some delay in Congress, but I would like to point out to you that it seems rather unbecoming to me to hear you complain about these "long-sought programs" when you have, in effect, contributed to that problem yourself.

For instance, we just this morning received a report from both BIA and/or the Department of the Interior on the bill before us. Now that is just this morning. It is the usual practice of the Congress to await the furnishing of reports by the affected departments or agencies before proceeding with hearings. It appears that if we had waited for you to furnish us the report on this, we would have probably still been waiting to have had these hearings. Would you like to comment on that?

Mr. THOMPSON. Yes, sir. To the latter point, Mr. Chairman, if I may comment? Undoubtedly there is an apology due to the committee for the lateness of the report. We did make extra efforts over the weekend to get them around to the subcommittee staff. We are well familiar with the requirements of getting reports to the Hill prior to the hearing. We ask your indulgence on this particular matter in this particular case. The responsibility rests here with our staff.

Second, I think the statement is generally phrased. "Long-sought to implement its philosophy of Indian self-determination" speaks in general to the President's pending legislation to implement his July 1970 message to the Congress and the American Indian people.

We want, of course, as we testified before, to support that message. We are pleased with recent congressional action to pass some of the legislation. Indeed, S. 1017 embodies three of the President's initiatives here and we are pleased with that. I think we are also saying that we want to get this enlightened legislation passed through the Congress, of course with your blessing and concurrence and help, as soon as possible.

So it is not a criticism, I don't feel, of the committee or of the Congress. It is just a reaffirmation of our support for a goal, I think, that we are all working for.

Mr. MEEDS. It then is incumbent on both the Congress and the administration to move forward aggressively and progressively in these areas, which we all agree are essential to Indian self-determination. That obligation doesn't end with just giving speeches. It requires hearings and reports and committee sessions and markups and passage by the Congress. Would you agree with that?

Mr. THOMPSON. I would concur.

Mr. MEEDS. And the administration's obligation doesn't cease after it gives a speech. It is essential to keep working and to get these [illegible]ports up here so that we in Congress can pursue these matters.

[illegible]r. THOMPSON. Mr. Chairman, we are fully cognizant of that, and I t[illegible]nk our effort, our good faith, is evident in working with the Congress to see some of these things that we all want passed.

Mr. MEEDS. Very well. I hope we understand each other on that point.

Now you have experts from the various areas here, and please feel free to call upon them for any help you may be wanting in answering questions.

I note in the definition section, section 4, on page 4 of the bill, it states: "Indian means a person who is a member of an Indian tribe."

In interpreting this as part of the proposed changes in the Johnson-O'Malley section, do you intend that the responsibility of the BIA through Johnson-O'Malley shall extend to districts which are not in close proximity to, or on, Indian reservations?

Mr. THOMPSON. I believe as far as the operation of the Johnson-O'Malley program currently, we are providing assistance to those public school districts that are not necessarily on or near Indian reservations. So this would not be any major policy change.

Mr. MEEDS. Well, I recall a recent communication with BIA about the Bellingham, Washington School District located within 20 miles of the Lummi Reservation. The argument was made it wasn't in close enough proximity to the Lummi Reservation. I think we finally resolved that and got that Johnson-O'Malley aid, but can you name any school districts which are not within, say 40 or 50 miles of Indian reservations, in which Johnson-O'Malley funds are being expended?

Mr. THOMPSON. For a specific answer, I would like to refer to Dr. Benham.

Dr. BENHAM. Mr. Chairman and Congressman Regula, the Commissioner was pointing out that we are currently considering changes in the Johnson-O'Malley regulations. And the service population now served through Johnson-O'Malley is "on or near" and we are considering the option of perhaps going beyond that.

At the present time by virtue of a court case we are engaged in defining what constitutes "near," which we find is no small matter using your case as an illustration. But to answer your question specifically, Congressman Meeds, it is "on or near," and the problem is then what constitutes "near."

Mr. MEEDS. In this instance, I think we have here a perfect illustration of the failure of Congress to move. Johnson-O'Malley was enacted in 1936 and hasn't been amended since. The BIA has run it by administrative regulation during that total period of time and we in the Congress have known that you were interpreting it to be "on or near" Indian reservations, when the law clearly says "Indians" and it doesn't say anything about "on or near Indian reservations". Here you see a very substantial shortcoming of the Congress itself. And I think that in the bill before us, the Congress has got to take some kind of legislative action with regard to the interpretation of the obligation set forth in the Johnson-O'Malley Act of 1936.

If we simply enact this legislation as it currently is written and turn it back over to you, it seems to me that again it is not going to be interpreted in a manner that some of us might feel necessary to encompass all or at least a larger majority of Indians.

Could you give us some idea of the kinds of guidelines you are considering implementing with regard to expenditures under Johnson-O'Malley?

Mr. REESER. Mr. Chairman, I would like to clarify one point before you go on with that. The Johnson-O'Malley Act does not have any definition of "Indian" in it. The S. 1017 section 4(c) definition would not become a part of the Johnson-O'Malley Act. The section 4(c) definition would only apply to the new programs under S. 1017. It would not become a part of the Johnson-O'Malley Act because of the part A changes in the Johnson-O'Malley Act.

Mr. MEEDS. I am afraid I am going to have to disagree with you. It says, "For the purposes of this act" and that means the entire bill. If it were to be interpreted just for the first portion of it, it would say "title." So under the terminology of S. 1017, "Indian" means "a person who is a member of an Indian tribe" for all purposes of the entire act. That is my interpretation. Now, if you disagree with me, you better let me know.

Mr. REESER. Well then, would that mean that that definition would also apply to the sections of the Johnson-O'Malley Act that are not touched by 1017?

Mr. MEEDS. No, no. Just for the purposes of this act.

Mr. REESER. Of the proposed sections 4, 5, 6, and 7 of the Johnson-O'Malley Act?

Mr. Meeds. But I refer you to the original Johnson-O'Malley Act. It says:

> With any appropriate State, private corporation, agency or institution for the education, medication, agricultural assistance and social welfare, including relief of distress of Indians in such States, State or territory.

So we have in the original act a broad definition of Indian which the Congress has never seen fit to either enlarge or restrict. We have relied on administrative decision, and I think that is our real problem.

But please give me some idea of the kind of guidelines that you are presently discussing, for the distribution of the Johnson-O'Malley funds in a broader sense than "on or near reservations"?

Dr. Benham. Yes, sir. As you know, Mr. Chairman, for more than 2 years attempts have been made to revise the Johnson-O'Malley regulations, and in this 2-year period, these attempts got pretty involved.

In February of this year, proposed regulations were published and comments were received from many sources, ranging from total acceptance and approval of the proposed regulations to total objection. There were many in between also.

The Commissioner has had a committee working on a redraft or looking at the suggestions and coming up with regulations. The differences of opinion have come down to a few basic areas with the first area being eligibility to receive these services; another area is the application of these services to private schools; another area is the extent of control by the Indians and by the school board; and another area, Mr. Chairman, has to do with conditions under which a school district can receive funds for basic operations.

And generally speaking, these are the areas of concern that we are dealing with. There seems to be pretty general agreement on that from the suggestions received and so on.

Mr. Meeds. Are you involving Indian people in these new proposals?

Dr. Benham. Yes, sir. Of the over 50 replies received, I would say that 95 percent of them are from Indian organizations, tribes and individual Indian people.

Mr. Meeds. Isn't there a task force or a group that has submitted to you some so-called red regulations as their comment on the proposed draft?

Dr. Benham. Yes, sir, there is.

Mr. Meeds. How much consideration has this been given?

Dr. Benham. Very, very much, Senator——

Mr. Meeds. Thank you. I appreciate the 6-year term, but the salary is still the same.

Dr. Benham. My apologies, Congressman, but my point is still the same. They are receiving full consideration, Mr. Chairman.

Mr. Meeds. Let's consider your interpretation of what it says for the education of Indians in such territory or State.

Now what kind of arrangements do you have with States to assure that these funds are spent for Indian children?

Dr. Benham. We endeavor to do that by one of the current provisions, which is consistent with one in the bill that is being considered here. Title 25 of the present regulations calls for a State plan which will set forth what the funds will be used for and point out the areas of concern.

Mr. Meeds. Do you interpret the words "for Indians in such State or territory" to mean exclusively for Indians, or do you interpret it to mean for Indians and other people?

Dr. Benham. By and large it is our interpretation it is for Indians. In some instances, it is pretty hard to draw the line. I will use an illustration of a library book on American Indians that is obtained and becomes a part of the school library from Johnson-O'Malley funds. Sometimes non-Indians use that same library book. And my own personal evaluation is that that is highly desirable and I would feel that, of course, the Indian students should have first priority, but by the same token and at the same time, it does become a part of the libraries.

Mr. Meeds. Let me give you an illustration. Assume that you have an Indian community located near a white community and a kindergarten program is established using Johnson-O'Malley funds, and 50 of the children attending the school are Indians attending the kindergarten and 50 of the children attending the school are whites. Would you interpret that example so as to exclude the use of Johnson-O'Malley funds to provide for that education? That is the first question. Second, would you interpret that to provide for full funding under Johnson-O'Malley funds, or third, to provide for partial funding under Johnson-O'Malley funds?

Mr. Thompson. Mr. William Lay of our staff can comment on that.

Mr. Lay. Mr. Chairman, if the local school district provides, say, a kindergarten program as part of their standard education program, then they should provide it for all students, both Indian and non-Indian. In some instances, States do not have a kindergarten program as part of their regular education program. If Indian parents decide that they should have for their children, a kindergarten can be funded with Johnson-O'Malley funds. In a situation like that, our general interpretation is that if we have less than a class room full of Indian youngsters, and let us say the classroom can accommodate 20 students, if we have only 15 Indian students ready to participate in the kindergarten program, then we see nothing wrong with having the class filled out with 5 non-Indians. I would see no replacement of services to Indians if that is what the local Indian committee decided they would like to have. However, if there were enough Indian students to fill out the classroom and it was being paid for by Johnson-O'Malley funds, then we would not feel that we should fund a separate classroom for the non-Indians under Johnson-O'Malley.

Mr. Meeds. Well now, the example that I have used is, I am sure you recognize, not just some figment of my imagination but an actual situation that is presently occurring or at least was occurring in the Gallup School District. I asked there, and I'm going to ask you, is there any reason when there is participation—and I want it clearly understood I am not in favor of programs designed in effect to achieve subtle segregation either—but is there any reason why under the circumstances I just set forth in that example, that the Gallup School District, from public funds, couldn't provide 50 percent of the funding and the Federal Government through Johnson-O'Malley funds, provide 50 percent?

Mr. Lay. In the particular situation at Gallup I believe that the portion of the kindergarten was funded—first, Mr. Chairman, at this time the kindergarten program is not a standard requirement in the State of New Mexico. The Gallup School District did fund a portion of the kindergarten from some special Federal funding, and we made up the balance from Johnson-O'Malley.

Now more specifically answering your question, the general rule is that if local school district funds are used so that the kindergarten program is provided to the non-Indian students, then it should be provided on the same basis and with no additional expense from Johnson-O'Malley funds, for the Indian students.

In some instances there is a statement of cost. There is a question as to whether this is an entirely legal procedure. But here again, if this is the only way it can be provided for the Indian students, in some instances what you suggested has been done.

Mr. MEEDS. Well, prior to our hearings, all that funding, in Gallup was coming from Johnson-O'Malley for that kindergarten. You are now telling me part of it is coming from public funding?

Mr. LAY. It was my understanding, sir, that part of the funding was coming from special Federal sources and not from local school district funds. That was my understanding.

Mr. MEEDS. You see, I think that you people and the States necessarily have put an overly generous interpretation on the word "Indian" insofar as non-Indians are concerned and that Johnson-O'Malley funds are being used, much to my chagrin even in my own State, for non-Indian purposes. And I certainly can conceive of some circumstances under which beneficial programs for Indian students could not be carried out because of cost effectiveness and other things without involving non-Indian students and indeed I think it is a good thing; but I see absolutely no reason why the costs can't be prorated in these instances. Yet I found in our hearings on this issue that no one had even considered prorationing of costs. So I am delighted to hear that maybe at least somebody is beginning to think about it.

Mr. LAY. This is happening in some places.

Mr. MEEDS. Is this very much a part of your ongoing study about Johnson-O'Malley? Are you thinking of adopting any new regulations with regard to exclusive benefit for Indian children and establishing some new guidelines which would prevent the type of thing that occurred in Gallup?

Dr. BENHAM. In regard to the study, Mr. Chairman, the attempt is to identify what is happening let us say in a school district—let's say Gallup-McKinley County as a case in point, and we are attempting to identify what is happening as a consequence of Public Law 874 funds, Public Law 92-318 funds, of Elementary and Secondary Education Act funds, as well as Johnson-O'Malley funds.

Now how do they come together at the school level? Is there any duplication? We made an initial review of sample school districts, and we didn't find any duplication of programs, but this study gets into it in depth. Recommendations for a number of things, we think, will come out of that, and along this line as well.

Mr. MEEDS. Well, specifically have you given any consideration to a new definition within the Department and some new thinking within the Department as to what the relationship is between Johnson-O'Malley and the phrase "being exclusively for the use of Indian children"?

Mr. Lay. Mr. Chairman, our new regulations will propose that when the local Indian advisory committee or local advisory school board does decide that, as in the instance that you cited, splitting the funds is the way the funds should be spent for the best interests of their children, then that can be done.

Mr. Meeds. Now this bill provides that where there are expenditures of Johnson-O'Malley funds, there be an Indian school board in effect, or an Indian advisory group, which has absolute determination over the expenditure of those funds.

I assume you favor that?

Mr. Lay. This is true, yes.

Mr. Meeds. Now what happens in areas where there are relatively few Indian children; say you have a school population of 1,000 and only 10 Indian children in it in the school district. Now what type of situation would you have there?

Mr. Lay. If these children are determined to be eligible for assistance under Johnson-O'Malley programs, then here again an Indian advisory board will determine what programs should be in operation.

Generally they will narrow down their programs to specific counseling type programs, to specific programs, supervised study, this type of thing for which the personnel will be employed to serve only the Indian students in this particular kind of situation.

It is pretty easy to narrow that down, that is, to narrow the service down to the service that will be given only to the eligible Indian students.

Mr. Meeds. But under your present interpretation of the regulations, you just interpret that to mean "Indian children on or near reservations" so that you might not get into the Los Angeles school district at all; isn't that correct?

Mr. Lay. Under the present interpretation that is true, sir.

Mr. Meeds. So if we are to in effect protect all Indian children we are going to have to legislatively tell you what you must consider to be Indian children?

Mr. Lay. Yes, sir.

Mr. Meeds. And if we want to do it so that that interpretation becomes effective as to the expenditures under this bill, we better do it in this bill; isn't that correct?

Mr. Lay. Yes, sir.

Mr. Meeds. The gentleman from Ohio.

Mr. Regula. Thank you, Mr. Chairman. I would be curious as to the number of trained professionals within the Indian tribes to take over this responsibility. Is it substantial?

Mr. Thompson. Our experience, Congressman, has been since we moved in this effort, that we found our Indian contractors in most instances fully capable of performing under the terms of the contract, based on the experience over the last 4 or 5 years within the Indian Bureau working with the tribes. We are accelerating our efforts in 1975 based on our past background experience.

So we are confident that services will be provided in the most professional manner by Indian contractors.

Mr. Regula. Would these Indian contractors be a nonprofit organization or what would be the makeup of a typical Indian contractor you would have?

Mr. THOMPSON. It would depend on the type of contracting we are talking about. Obviously, in the construction areas, if we are talking about road construction——

Mr. REGULA. No, I am talking about the operation rather than the construction.

Mr. THOMPSON. Well, in the operational phase, the delivery of services type of programs, we envision those organizations being nonprofit primarily because what they are in effect doing is delivering services that would normally be delivered by Federal employees, but here we have them delivered by tribal authorities. With them being nonprofit tribal entities primarily, we will allow them some administrative expenses, so that it does not become burdensome financially to the tribes to provide these services.

Mr. REGULA. What do you see as the value of having this type of operation versus having the Federal Government employ the professionals who are members of the tribes and let them deliver the services?

Mr. THOMPSON. I am sorry, didn't hear all the question.

Mr. REGULA. Well, you are suggesting here that if a separate entity were established as a contracting agency, that this would deliver services. Would it not be a lump sum from the Federal agency in terms of delivering the expenses for operations?

In other words——

Mr. THOMPSON. It could be the tribal governing body, for example, that we entered into the contract with or, if the government body wants to set it up with an entity, we will deal with that. We would prefer of course to deal with a tribal governing body.

Mr. REGULA. What is the largest tribe and what is the total number of Indians in the United States?

Mr. THOMPSON. Well, the largest is the Navajo and I believe their population is about 130,000.

Mr. REGULA. OK. In the Navajo Tribe in your estimate how many people do they have who are Navajos who have teaching certificates?

Mr. THOMPSON. I don't have that unless Dr. Behham has that available. We will be pleased to supply that for the record.

[The information follows:]

There are 1,181 professional education employees in the Bureau of Indian Affairs Navajo Area Office jurisdiction. Of these 22% are Indians and 13% are Navajo Indians. Of all BIA education employees in that Area (including nonprofessional and professional) 71% are Indians and 63% are Navajo Indians.

Mr. REGULA. How can you be discussing this contracting relationship when you have no idea what the capability would be in existence to provide contracting personnel?

Mr. THOMPSON. The contracting initiative is such that where an Indian tribe does not feel that contracting is something they want to do, there is going to be no push by the administration or the Bureau to force contracting. To us, however, Congressman we see this as a trend and support it.

To answer your specific instance, the tribal contractor can hire the necessary expertise that is needed to implement the contract.

Mr. REGULA. I am a little at a loss as to how this will result because unless you got a body of trained personnel out there to do the job who are members of the tribe, what are you going to improve by doing it by contract as opposed to the present system?

Mr. Thompson. One of the primary benefits would be that the tribal council would actually control the operation of those services, in a way very similar to what the cities and other local governments are currently doing we would make this possible by vesting in the tribe the most local possible control over programs that the Federal Government is currently providing. I think that is the key.

Additionally it will provide the opportunity for some employment opportunities and upper mobility advancement for the Indian community to recognize that, yes, there is a job requiring further training on behalf of this individual or group of individuals.

Mr. Regula. In the Federal program, don't you hire as many Indians as possible to carry out the federally managed programs in education?

Mr. Thompson. Yes, we have a policy now that gives Indians preference in hiring within the Bureau. But we see moving control of the programs from federally delivered to tribally delivered as a method of strengthening tribal governments and as a method of really getting local decisionmaking authority down to the lowest level possible. We see that as a distinct advantage.

Mr. Regula. You have advisory boards now where you are delivering education services through the Federal mechanism? In other words, do you use the tribal advisory boards at all?

Mr. Thompson. Yes, in every school that the Bureau is currently operating we have an advisory school board.

The contracting authority in title I of S. 1017 gives us authority to contract in education as well as other programs.

Mr. Regula. Did you get any information, for example, from the Navajos as to how many Navajos would be certified as teacher training personnel and administratively?

Mr. Thompson. Congressman, we would be pleased to provide that.

Mr. Regula. Do you presently have any idea in your Federal education programs what percentage of the personnel are of Indians and what percentage are not Indians?

Mr. Thompson. I will defer the education part to Dr. Benham, but I believe our total overall Indian percentage of employees is approximately 60 to 68 percent of the employees in the Bureau.

Mr. Benham. In education I will estimate, Congressman, and I came a couple of years ago from the position of Director of Schools for Navajos, at that time the percentage was something like 75 percent Indian and 25 percent non-Indian.

I would like also to comment on the previous question because I certainly did not want to leave the impression that there is not a body of professionals that have been trained. I would estimate just offhand there is something like 1,500 Indian teachers. We have worked real hard out there in arranging with local colleges and universities to get a program going on the reservations, as well as through the Navajo community college so that people in the public schools, in the missions schools and in the Federal schools, are in college work while they are going on with their regular duties and using the summertime to get college degrees and so on.

In addition, the scholarship program of the Bureau of Indian Affairs last year had about 13,500 people in higher education and many of these were Navajo. I don't know the exact breakdown at this time of that number. But of that number about one-fourth of them to one-fifth of them every year are in the field of education. I am speaking nationally now.

There is a great deal of interest in this. One of the things I think that has thrilled me so much over the years is the intense interest on the part of Indian tribes, on the part of individual members of Indian tribes in going on into higher education and becoming teachers and staying in the field as well as in other fields of human endeavor as well.

Mr. REGULA. What do you see as the advantage of having the self-determination versus the present program in light of the fact that you have the advisory committees?

Dr. BENHAM. Well, Congressman, back in 1966–67 I was one of three people that helped establish the first contract school in the Bureau of Indian Affairs in Arizona. And at that time I felt, and I still feel, that the fact that this kind of an option existed for people on the Navajo Reservation and we worked in offering this as one of the objects over the years, is highly desirable as an alternative for them to determine the extent to which they want to control their own affairs in a particular situation.

I have been to the community meetings and I have talked with many many communities about the advantages and disadvantages of the public school system, of the total tribal system, of an individual school like the Rough Rock School in Arizona, and of the American public school and the Bureau of Indian Affairs schools. There are some advantages and disadvantages of each.

One thing that is very appealing to Indian groups and I think the crucial advantage of the contract school is the fact that they can determine who works there and the policies under which they work where they don't have State personnel regulations, they don't have civil service regulations and so on.

Mr. REGULA. Are you suggesting that these schools would not be subject to State standards?

Dr. BENHAM. No, sir. I am suggesting that the rein is in the hands of the local community rather than State personnel systems.

Mr. REGULA. Are they subject to the standards of the State in which they operate?

Dr. BENHAM. In the contract that I have participated in, the program offered has to be equivalent to the program of the State, yes.

Mr. REGULA. Are all the teachers that would be involved and the administrators required to be certified by the applicable State standards?

Dr. BENHAM. By and large, yes; with some room left for people to get additional training to come up to State standards.

Mr. REGULA. In other words, temporary certification?

Dr. BENHAM. Yes, sir.

Mr. REGULA. Has there been any definitive study of the contract schools as opposed to federally operated programs?

I am talking in terms of success.

Dr. BENHAM. About the only study I recall that has been made by a professor at the University of Chicago I would say 6 or 7 years ago and I thought the main disadvantage of the study was in regard to the Rough Rock School, that it hadn't operated long enough for anyone to really get the feel of the results of it.

Mr. REGULA. Thank you.

Dr. BENHAM. But of course you know sir, that they are evaluated every year as part of the contract.

Mr. MEEDS. I have a few more questions. Oh, pardon me. The gentleman from the Virgin Islands.

Mr. DE LUGO. No, go ahead. I have no questions.

Mr. MEEDS. I have some questions and then I will submit a list of questions of a more technical nature, to you.

I go back to section 4 where it states "Indian means a person who is a member of an Indian tribe."

Now do you interpret that to be an enrolled member of an Indian tribe or any member who has the same blood as the tribe or something else?

Mr. REESER. Mr. Chairman, most tribes do have some sort of roll. There are some that don't and in those instances, it is those that are recognized by the governing body as members of a tribe. They really don't have a formal roll system.

Mr. MEEDS. Well, let's examine that just a little bit.

How many "Indians" are there in the United States?

Mr. REESER. I believe it is something like 800,000.

Mr. MEEDS. Approximately 800,000 by most everyone's statistics, isn't that right?

Mr. REESER. Yes, sir.

Mr. MEEDS. And now how many of those are enrolled in tribes? Less than half, correct?

Mr. REESER. Well there is something around half of that in the Bureau of service population. I think about 450,000.

Mr. THOMPSON. Excuse me, I believe the half you are referring to, Congressman, half of those 800,000 are currently residing off the reservation and about half are residing on. Of the half that are residing off, many of them for example, are still enrolled through their home reservations. But I don't think we have that information readily available. We will certainly supply it for the record though.

Mr. MEEDS. Well, I think we know enough to at least get to the core of my question here. Are you contending that there are more than 600,000 of these, 600,000 or more, who are enrolled members of the tribes?

Mr. THOMPSON. Again, I don't have a specific percentage of the off-reservation people that are enrolled back to a tribe. Just from my personal experience I am positive that there are a great number of Indian people residing in the urban communities that are enrolled.

Mr. MEEDS. I understand that and I agree with you, but I think that you will find when you start looking at it, you do not have 600,000 enrolled tribal members in the United States. And even if we assume that you do have 600,000 by the definition of enrolled which you gave, you are about to exclude from the provisions of this act one-quarter of all of the Indians in the United States.

Now, I don't think that is a very comprehensive approach. Do you?

Mr. Regula. Would the gentleman yield?

Mr. Meeds. Delighted.

Mr. Regula. How many Indians are there?

Mr. Meeds. Well, there are 800,000 Indians in the United States by almost everyone's calculations.

Mr. Regula. When you say 800,000——

Mr. Meeds. Speak up so everybody can hear you.

Mr. Regula. When you say 800,000 how far removed in percentage does that apply?

Mr. Meeds. Probably to oh, one-sixteenth or one-quarter. So, you know, even if we assume that 600,000 of them are enrolled in tribes, and that assumption isn't necessarily correct, but even if we assume it by your enrolled definition, you are excluding one-quarter of the Indians of the United States.

Mr. Thompson. Mr. Chairman, in those instances, if you stick with just enrolled, that may be so. There are many tribes that do not have rolls that we are providing services to.

In answer to your question, philosophically we are going to try to get services to as many eligible Indians as possible. Now granted we are not going to be able to serve every Indian in America with the Johnson-O'Malley money. I think we have to take that as a given fact because there are situations of Indians residing in very large urban populations who have a very minute minority in the public schools. And to attempt services to that element would be prohibitive by the cost.

But of the 200,000 or the 100,000, and we don't know how many of those are not tribally enrolled Indians, so the number could be lower. That is my point, the number could be lower.

Mr. Meeds. Well, wouldn't you agree with me, Mr. Commissioner, that one of the major problems of Indians unrest today is the failure, through BIA, HEW or some other agency of Government, to coordinate policy which includes urban Indians who may not be enrolled in tribes?

First of all, if they are urban Indians, they are probably not getting your services, correct? If they are not enrolled in the tribes, they are not getting private services, either. They are not getting the benefits the tribes may receive through the court of claims and otherwise.

And one of the major shortcomings in the Government today is measuring up to our responsibilities to Indians, regardless of whether they are on or near reservations, regardless of whether or not they are enrolled in tribal organizations or not.

Mr. Thompson. Well, I think, Congressman, to a degree there is a major problem in the urban Indian community. I think no one can deny that. There is discussion over who bears responsibility for that problem.

Mr. Meeds. I understand that.

Mr. Thompson. Currently the Bureau is charged in practice and in policy with providing services to reservation Indians "on or near." That is being tested in the Supreme Court and now we are coming up with a definition.

To move to your particular point, the administration has set up and Congress has funded urban Indian centers in attempting to try to get

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information out to those local State and city entities that are charged with providing services to people because of need including American Indians. So we do have a communications problem here.

I don't think it would be wise policy for the Federal Government to say that we are going to lift from States and cities their responsibility to Indians. I think one of the things we want to do is insure that moneys that they receive many times under the "Indian" blanket gets down to the Indian.

Just as an aside, I have seen many, many proposals coming in from cities and States who decry the huge Indian problem they have where some of the funds never get down to the Indian community.

But we—and I say "we" collectively, have tried to address that problem through Indian centers, through outreach programs, through information programs. The problem of an Indian seems to me to be that he goes to the Bureau and they tell him, no, you are an urban Indian and then he goes to the local service agencies of cities and municipalities and they say, no, you are an Indian so go over to the Indian Bureau. He gets the proverbial runaround.

I don't think that is the answer. I think we need a very aggressive program of some type to persuade these people that they have the responsibility for people in the economic situation in which Indians find themselves.

Mr. Meeds. I have more questions, which I have been currently given and if there is no objection, they will be submitted to you and we would like to get the answers to them as quickly as possible, say within a month's period of time.

Without objection, so ordered.

[The questions referred to plus the answers submitted, follow:]

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., June 6, 1974.

HON. MORRIS THOMPSON,
Commissioner, Bureau of Indian Affairs, Department of the Interior,
Washington, D.C.

DEAR MR. COMMISSIONER: During Subcommittee hearings on S. 1017, I indicated that the Subcommittee would be submitting further questions to the Bureau on various aspects of the legislation.

I would appreciate your consideration and full response to the following questions for inclusion in the hearing record:

TITLE I

1. In section 4(c), defining "tribal organization", what do you feel is the import and effect of the phrase "or elected by the Indian population to be served by such organization"?

2. Section 102(c) authorizes the Secretary of the Interior to require a tribal contractor to secure liability insurance. Do you feel that the provision adequately protects the rights and interests of the general public and adequately protects the sovereign immunity of the tribes? What would be the cost factor to the tribes in securing such insurance?

3. Section 106(a) would exempt contracts under section 102 and 103 from the provisions of the Act of August 24, 1935, particularly regarding performance bonds. What effect would such a provision have on tribal contractors and their subcontractors?

4. Do you feel that contracting the programs and services of BIA under the terms of the bill raises any danger that the United States will later be subject to a suit for damages, under the trust responsibility or otherwise, because the tribal contractor poorly administered a particular service to the detriment of the tribe?

5. Do you feel that the provisions of section 106(g) adequately protect the rights of individuals to be benefited by the particular program or service contracted from abritary or discriminatory action by the tribal contractor? What would be the remedy?

6. What guarantees, if any, are there that none of the trust duties of the Secretary or any program or service directly affected with the trust will be contracted to the tribe?

7. Assume that the tribal contractor, through mismanagement or otherwise, depletes the contract funds prior to the end of the contract period for some important service. Assume further that the contractor requests a retrocession pursuant to section 106(d).

Would the Department accept retrocession under those circumstances? If the Department accepted retrocession, how would they continue to provide this essential service?

TITLE II

1. The Johnson-O'Malley Act confers authority on the Secretary to enter into certain contracts to carry out his responsibility. The Act, itself, carries no appropriation authority. The appropriation authorization for JOM programs is derived from the so-called Snyder Act.

Do you view the funding authorization in section 202 as putting a two-year limitation on authorization of JOM funding such that we would have to reenact authorization for funding two years hence or have the program lapse? Or would the funding authority merely revert to the Snyder Act?

I would appreciate your response to these questions as soon as possible.

Sincerely,

LLOYD MEEDS,
Chairman, Indian Affairs Subcommittee.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., September 16, 1974.

HON. LLOYD MEEDS,
Chairman, Subcommittee on Indian Affairs,
House of Representatives, Washington, D.C.

DEAR MR. MEEDS: This responds to your June 6 letter submitting further questions on S.1017, the "Indian Self-Determination and Education Assistance Act" as passed by the Senate on April 1, 1974. For your ready reference the questions are below:

GENERAL PROVISIONS

Question 1. In section 4(c), defining "tribal organization" what do you feel is the import and effect of the phrase "or elected by the Indian population to be served by such organization"?

Answer. The entire definitions (with the amendments proposed on pages 4 and 13 of our May 17, 1974 report on Title I of S.1017 to the House Interior and Insular Affairs Committee) reads as follows:

"(c) 'tribal organization' means the elected or otherwise recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies *(or elected by the Indian population to be served by such organization)* and which includes the maximum participation of Indians in all phases of its activities: *Provided,* That, for the purposes of each specific request for a contract or grant under sections 102, 103, and 104 of this Act, the term includes only an organization which each Indian tribe to be served under such contract or grant either (1) has approved (or specified in their request) for such contract or grant, or (2) has not objected to within thirty days of notice from the appropriate Secretary of his receipt of the request for such contract or grant." (underscoring supplied)

We understand that there is some concern that the underscored phrase could include groups of Indians in urban or other areas to which Bureau of Indian Affairs services have not been extended. We do not believe that such a result was intended or follows since the Secretary can only be required to enter into a contract under the terms of section 102(a) of S.1017 is "upon the request of any Indian tribe" which would require action by a recognized tribal governing body. In addition, the proviso set out above which we propose for addition to section 4(e) is, as discussed on pages 3 and 4 of our May 17, 1974 report, to provide further assurance against contractors who are objectionable to a tribal governing body.

The types of bodies which we believe the Senate intended to be covered by the underscored phrase includes elected local Indian education committees or school boards. We believe that the concerns with the phrase could be further alleviated by the addition of language so that it would read as follows: "(or elected by the adult Indian population to be served by such organization as authorized or approved by one or more such governing bodies)."

TITLE I

Question 2. Section 102(e) authorizes the Secretary of the Interior to require a tribal contractor to secure liability insurance. Do you feel that the provision adequately protects the rights and interests of the general public and adequately protects the sovereign immunity of the tribes? What would be the cost factor to the tribes in securing such insurance?

Answer. Yes, we believe that the provision is adequate. It is currently our policy to require tribal contractors to carry liability insurance to protect the interests of the general public. If the functions contracted to a tribal contractor were performed by the Bureau of Indian Affairs or the Indian Health Service, persons injured in the course of performing those functions could sue the United States under the Federal Tort Claims Act. The provision in section 102(e), as revised and explained on page 3 of our May 17, 1974 report to your committee, provides a sound basis for continued protection of the general public when a tribal contractor is involved while, together with section 110, assuring continuation of the tribes sovereign immunity to suit.

The costs to tribal contractors of liability insurance coverage is included in the amount of funds provided under the contracts by the Bureau to such contractors.

Question 3. Section 106(a) would exempt contracts under section 102 and 103 from the provisions of the Act of August 24, 1935, particularly regarding performance bonds. What effect would such a provision have on tribal contractors and their subcontractors?

Answer. Under Section 106(a) the decision as to whether contracts with Tribal organizations shall conform to the provisions of the Act of August 24, 1935 is left to the discretion of the appropriate Secretary.

The regulations required by section 107(a) would include waiving the bonds required by the Act of August 24, 1935 only in those instances where the tribal contractor cannot obtain them. In such instances the Secretary will in effect act as a self insurer insofar as the performance bond is concerned. However, first tier subcontractors would not be protected since a payment bond would not be furnished by the tribal contractor. Employees of subcontractors and their suppliers and second tier subcontractors would however be protected as we plan to incorporate a requirement into the regulations prepared under Section 107(a) that all tribal contractors require their subcontractors to obtain performance and payment bonds in amounts required by the Act of August 24, 1935. This should minimize the possibility of anyone being damaged as a result of nonpayment. Although first tier subcontractors themselves would not be protected, it should be noted that we know of no cases where tribal contractors have failed to honor their obligations.

Question 4. Do you feel that contracting the programs and services of BIA under the terms of the bill raises any danger that the United States will later be subject to a suit for damages, under the trust responsibility or otherwise, because the tribal contractor poorly administered a particular service to the detriment of the tribe?

Answer. Such suits are conceivable under unusual circumstances but it must be remembered that monitoring the performance under such contracts for compliance with their terms is the Secretary's responsibility and failure of a tribe to properly administer a program under a contract would most likely be associated with a failure of Federal officials to properly monitor the contract. In fact, the situation would be similar to a situation where the Federal Government itself failed to administer the program or service properly. However, it is of course our intention to properly monitor performance by all our contractors to avoid or at least minimize the possibility of improper or inadequate performance.

Question 5. Do you feel that the provisions of section 106(g) adequately protect the rights of individuals to be benefited by the particular program or service contracted from arbitrary or discriminatory action by the tribal contractor? What would be the remedy?

Answer. Section 106(g), as revised by the proposed language in page 11 of our May 17, 1974 report, does provide the basis for adequately protecting the rights of the intended beneficiaries of programs or services contracted to a tribal organization. Any individual who is denied proper benefits or services will have the right to initially appeal to Bureau's contracting officer and to further appeals to higher levels in a manner consistent with that provided in 25 CFR, Part 2 "Appeals From Administrative Actions" relating to actions or decisions of BIA officials. If such a contract violation is found, the BIA would proceed to achieve compliance by the contractor and, if all else failed, the ultimate remedy would be to terminate the contract and assume direct operation of the service or program involved.

Question 6. What guarantees, if any, are there that none of the trust duties of the Secretary or any program or service directly affected with the trust will be contracted to the tribe?

Answer. Section 106(f) includes the following provisio:

"*Provided*, That the Secretary shall not make any contract which would impare his ability to discharge his trust responsibilities to any Indian tribe or individual."

Section 110 provides that—

"Nothing in this Act shall be construed as * * * authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indian people."

Section 102(a) permits the Secretary to decline to enter into any contract if "adequate protection of trust resources is not assured."

We believe that the above quoted provisions provide a sound basis for our regulations which will include descriptions of the specific activities (such as approvals of leases and other transactions involving trust lands, approvals of expenditures of trust funds, etc.) which cannot be contracted because of the involvement of the Secretary's trust responsibilities. We are currently working with the Solicitor's office to define such activities.

Question 7. Assume that the tribal contractor, through mismanagement or otherwise, depletes the contract funds prior to the end of the contract period for some important service. Assume further that the contractor requests a retrocession pursuant to section 106(d).

Would the Department accept retrocession under those circumstances? If the Department accepted retrocession, how would they continue to provide this essential service?

Answer. Yes, we would accept retrocession. In fact, in a case involving "essential service" a breach of contract would probably be involved and we would have an obligation to rescind the contract and resume direct operations of the service. Such a situation would be within the provisions of the new section 109 proposed on page 13 of our May 17, 1974 report.

The financing of the continued provision of the "essential service" generally would be by reprograming funds from within the BIA or in unusual cases by requesting a deficiency appropriation. The situation would be the same as if a local BIA operated program was running out of funds prior to the end of the fiscal year for similar reasons.

TITLE II

Question 1. The Johnson-O'Malley Act confers authority on the Secretary to enter into certain contracts to carry out his responsibility. The Act, itself, carries no appropriation authority. The appropriation authorization for JOM programs is derived from the so-called Snyder Act.

Do you view the funding authorization in section 202 as putting a two-year limitation on authorization of JOM funding such that we would have to reenact authorization for funding two years hence or have the program lapse? Or would the funding authority merely revert to the Snyder Act?

Answer. Since its enactment in 1934, the "Johnson-O'Malley Act" has not included an appropriations authorization and the "Snyder Act" (25 U.S.C. 13) has provided the authority for the JOM appropriations including the appropriation for the current fiscal year 1975. Unless there is a clear indication of congressional intent to the contrary (and we find none in the Senate actions on S. 1017), we would view the specific appropriation authorization for fiscal years 1975 and 1976 (contained in the new section 7 of the JOM Act which would be added by section 202 of S. 1017) as not altering our authority to request appropriations for JOM contracts in fiscal year 1977 and subsequent years under the general "Snyder Act" authorization.

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

Mr. MEEDS. One last question. In your statement you indicated that parts B, C, D, and E are duplicative because the authority for those programs exists in other places.

I think I am aware of various acts in which authority for those things resides. But again let us just take an illustration of school construction for instance. Public Law 815 provides for school construction, again I think, only "on or near" Indian reservations. How much was expended last year in fiscal 1974 in construction of schools for Indian children under Public Law 815?

Mr. THOMPSON. Responsibility for those moneys rest with HEW, but it is our understanding that about $9.5 million was expended in that area.

Mr. MEEDS. Last year?

Mr. THOMPSON. Last year on Indians.

Mr. MEEDS. And the year before that?

Do you have the information for the year before?

Mr. THOMPSON. I don't have that. The witnesses for HEW may have it, Mr. Chairman.

Mr. MEEDS. OK, we will save the question and ask them. But the fact is that while there may be authority for many of these programs, that authority is not generally being widely used, is it?

Mr. THOMPSON. It is my understanding, again subject to clarification by the witnesses from the Department of Health, Education, and Welfare, Mr. Chairman, that there is a current backlog of approximately $160 million in the Indian portion of the Public Law 815 program.

I might also point out however, that there is approximately $150 million backlog just in construction activities for the Bureau for the schools that we are currently operating.

Mr. MEEDS. As a matter of fact, my colleague Mrs. Hansen has requested a study to be done by you with regard to the needs of the Indians for Indian schools, for school construction; is that not correct?

Mr. THOMPSON. That is correct. We have a public school survey of construction needs related to the education of reservation Indian children.

Mr. MEEDS. Could you furnish us a copy of that?

Mr. THOMPSON. We will be pleased to, Mr. Chairman.

Mr. MEEDS. Unless there is objection, we will make that a part of the file of the committee on this subject. I think that would be very valuable.

[The information referred to can be found in the files of the subcommittee.]

Mr. MEEDS. The gentleman from Ohio.

Mr. REGULA. Yes. I do have three questions.

No. 1, how many Indian children are enrolled in the federally managed programs at the present time?

Mr. BENHAM. About 50,000.

Mr. REGULA. And this 50,000 includes all schools?

How would you estimate the number enrolled in schools not operated by the Federal Government, of Indians that are members of an Indian tribe?

Mr. BENHAM. In the service population of the Bureau of Indian Affairs, about another 131,000 are enrolled in the public schools and another——

Mr. REGULA. When you say "public schools" are you talking about school districts that have Indian and non-Indian children?

Mr. BENHAM. Yes, sir; operated by the States and the school districts.

Mr. REGULA. Do most of those 130,000 benefit from Johnson-O'Malley funds or not?

Mr. BENHAM. About 98,000 of them are in the Johnson-O'Malley program this year.

Mr. REGULA. In other words, this would be that there would be a substantial number of Indian children, as well as non-Indian children in school districts that would apply for Johnson-O'Malley assistance; is this correct?

Mr. BENHAM. Yes, sir. This is from 5 to 18 years of age.

Mr. REGULA. Right. The contracting authority envisioned in this act would only apply to the 50,000 is that correct?

Mr. BENHAM. The Johnson-O'Malley Act would apply to the total number in the public schools.

Mr. REGULA. I understand that. But in the provisions of the bill that talk about having contracting authority for the tribes to operate schools, you are really talking in essence about the 50,000 which are in federally operated schools at the present time.

Mr. THOMPSON. That is correct. Title I, as I indicated earlier, speaks to the other program activities as well.

Mr. REGULA. Historically, or statistically, however, you want to state it as those in the federally operated schools.

What is the percentage of those starting out who finally graduate from high school?

Mr. BENHAM. About 7 out of 10 according to our last evaluation that was made a couple of years ago. It has varied over the years, but it was about 7½ youngsters out of 10.

Mr. REGULA. Do you have any idea what the percentage of the graduating class of federally operated schools who go on to some type of higher education?

Mr. BENHAM. I can use a particular illustration. While he was in the Gallup area, Congressman Meeds had a chance to visit Wingate High School, which is a Federal school near Gallup, N. Mex. At Wingate High School about 4 years ago I was there and I asked that particular question and 90 percent of the youngsters were going to education beyond the high school level. That is, to vocational training or to higher education, and it was pretty evenly divided in that group. We have some schools, I am sure, that don't reach that high a standard, but there is tremendous emphasis in the Federal schools put on the opportunities that youngsters have for higher education beyond the high school level.

Mr. Thompson. Let me expand on that if I may, Congressman. Over the last couple of years—and this can be an indicator of the number of Indian students entering college—but I believe 4 or 5 years ago the Federal Government was providing through the Bureau of Indian Affairs approximately $2 million for assistance to higher education. That now is up to $29 million and we are still trying to keep up with the needs.

So that may be a little indicator.

Mr. Regula. Federally operated community colleges, how many are there in the reservations?

Mr. Thompson. I was going to answer six, but I am told they are not federally operated

Mr. Regula. But probably federally funded with an operation by the tribe?

Mr. Thompson. I believe we have six junior colleges throughout the country. I will ask Dr. Benham to answer that.

Dr. Benham. One tribal community college is in operation in Tsaile, Ariz. It is the Navajo Community College, which is federally funded. There are two in the Dakotas that receive some Federal help in terms of the basic operations also. And of course in the Federal endeavor there is one, but it is not a community college, but the Haskell Indian Junior College of Lawrence, Kans. The program there is made up of two parts: One is a junior college level program and the other is a vocational training part. Then the other one is the Institute of American Indian Arts at Santa Fe, which provides some 2 years of training in the art field.

Then you have the Southwestern Indian Polytechnical Institute at Albuquerque, N. Mex., which is vocational in nature.

So that is the dimensions of it.

Mr Meeds. Thank you very much, Mr. Commissioner and gentlemen. We appreciate your testimony.

Mr. Thompson. Mr. Chairman, thank you. We would be pleased to respond to the questions when you get them to us.

Mr. Meeds. Our next witness will be Stanley Thomas, Assistant Secretary for Human Development, Department of Health, Education, and Welfare. Mr. Secretary, pleased to have you. You have a prepared statement that you may read into the record or summarize.

STATEMENT OF HON. STANLEY B. THOMAS, JR., ASSISTANT SECRETARY FOR HUMAN DEVELOPMENT, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY HON. JOHN OTTINA, COMMISSIONER OF EDUCATION; AND ROBERT HOWARD, DIRECTOR, OFFICE OF NATIVE AMERICAN PROGRAMS; AND WARREN CARDWELL, DIRECTOR, DIVISION OF PROGRAM FORMULATION, INDIAN HEALTH SERVICE

Mr. Thomas. I will basically summarize some portions of it. By your leave I would like to introduce on my immediate left the Commissioner of the Office of Education, Mr. Ottina, and on my immediate right, Mr. Cardwell, Director of the Division of Program Formulation, and, finally, Robert Howard, who is Director of the Office of Native American Programs.

Both you and Commissioner Thompson described and discussed the mutual interest of Congress and the administration as it relates to self-determination so I will just read a few sentences from my remarks with respect to that.

The Department of Health, Education, and Welfare is vitally interested in the enactment of legislation which would promote and encourage further self-determination for the Indian people to attain the ultimate goal of "Indian solutions to Indian problems."

As we advance toward self-determination, however, we must also be sensitive to the need for maintaining Federal support and concern for the Indian people. As we strengthen the Indian's sense of autonomy, we must be sure not to threaten his sense of community and tribal life. That means making it clear to Indians that they can become independent without losing their unique relationship with the Federal Government and that self-determination and the assumption of control of HEW programs and services by Indian tribes represents a reinforcement rather than a termination of this unique relationship.

Mr. Chairman, I will submit for the record the activities of our Office of Native American Programs, the Office of Education, the Indian Health Service, which is all in the statement and proceed to discuss S. 1017.

Title I of the bill contains provisions designed to further the control exercised by Indians over programs currently operated by the Federal Government. Sections 102 and 103 direct the Secretaries of Health, Education, and Welfare and Interior upon the request of any Indian tribe, to enter into contracts with any tribal organization whereby they would plan, conduct and administer Federal Indian programs.

While we prefer legislation proposed by the administration as more comprehensive than S. 1017, we endorse any legislation which effectively promotes Indian self-determination. Therefore, we recommend enactment of title I.

We note that some revisions have been made in this title since Under Secretary Carlucci testified before the Senate subcommittee on an earlier version of S. 1017 in June of last year. For example, the current legislation directs rather than authorizes the respective Secretaries to contract with tribal organizations. Additionally, safeguards have been built into sections 102 and 103 to assure properly administered and operated programs.

While we find these revisions to be positive steps toward self-determination, we would like to propose some technical changes and will forward them to the committee by letter in the near future.

Section 104 authorizes the Secretaries of Health, Education, and Welfare and Interior, upon request of tribal organizations, to make grants to tribes for planning, training, evaluation, and other activities designed to make it possible for such tribal organizations to enter into contracts as provided in sections 102 and 103. We would recommend that this section be clarified to limit the Secretary's role to Indian Health activities, which is the intent of this section.

In conclusion, title I of S. 1017, as revised, has been strengthened considerably over the 1973 version of the bill and contains useful authority for advancing Indian self-determination.

Title II contains provisions affecting the education for Indians. There already exists at this time various authorities under which Indian education is provided, which are themselves duplicative and overlapping. Indeed, we are presently joining the Department of the Interior in a joint study mandated by the Congress to examine closely the various Indian education programs now underway. Our study results, which will be completed by September 30, 1974, will include legislative proposals, if any are needed, designed to remove the existing duplication. We feel that it would be highly undesirable at this time to create new authorities for Indian education which would cause even more duplication as title II would do. Therefore, we recommend that the Congress defer action on title II until such time as we have completed our study and can make recommendations to the Congress.

Duplication of present HEW authority exists in parts B and C of title II. Part B would authorize financial assistance to institutions of higher education, nonprofit organizations or agencies, and Indian tribes and organizations to provide fellowships to carry out programs and projects to improve qualifications of educational personnel serving Indians. Authority for such assistance already exists under section 810 of the Elementary and Secondary Education Act which has a section specifically on preparation of teachers of Indian children. Additional authority exists under the career opportunities program [Public Law 90-35 Education Professions Development Act, as amended]. Part C authorized Federal assistance in the construction, acquisition, and renovation of school facilities in public school systems which serve Indians on or near Indian reservations. Authority for such school construction presently exists under Public Law 81-815. In fiscal year 1973 the Department of Health, Education, and Welfare received $15 million for such efforts. In fiscal year 1974 this Department received $30 million, an increase of 100 percent. Approximately $4.8 million in fiscal year 1973 was obligated for construction of facilities to meet the needs of Indian children. Of the $30 million appropriated in fiscal year 1974, reportedly one-third is obligated to Indian programs, more than double the amount in 1973.

We believe that responsibility for school construction should not be divided further between two agencies of the Federal Government, the Department of the Interior and the Department of Health, Education, and Welfare. Such division of responsibility for construction of non-Federal facilities would fragment authority and create confusion among Indian people.

We hope that the Congress will avoid this additional duplication.

Mr. Chairman, that concludes my testimony. I will be happy to respond to your questions.

I hope you will permit me to call on my colleagues if necessary.

Mr. Meeds. Thank you, Mr. Secretary. First lets broadly define the areas of concern under this legislation. My understanding, and correct me if I am wrong, is that this legislation applies to HEW insofar as it applies to Indian health?

Mr. Thomas. Title I certainly in terms of contracting for services is specifically germane to the Indian Health Service. In title II, however, Mr. Chairman, there are a number of instances in which initiatives would be undertaken which do duplicate some of our existing authorities.

Mr. Meeds. Is it your understanding that those additional functions in title II would be administered by HEW or by BIA?

Mr. Thomas. It is our understanding, Mr. Chairman, that those would be initiated primarily under BIA.

Mr. Meeds. And it is your contention that some of these programs which are carried out either by HEW or some other department of Government?

Mr. Thomas. Yes, Mr. Chairman. And as you may recall from my testimony, I suggest a deferral of the enactment of title II because, as you are aware, the Department of HEW in consultation with BIA and the Department of the Interior, is analyzing what already are duplicative statutory authorities and are preparing a report to Congress by October 1, which we think will help clarify some of those problems that already exist.

Mr. Meeds. As you are aware, I am sure, Mr. Secretary, there are some internal problems in the U.S. House of Representatives which several years ago prevented us from taking a comprehensive look at the field of Indian education and specifically I refer to the inability in the House to have joint referral to committees. As a consequence, in addressing the question of Indian education we on the Education and Labor Committee were only able to address it from the standpoint of the public schools and were not able to combine it with legislation addressing the problem of Indian education in BIA operated schools and schools operated on Indian reservations by Indians.

But you think that perhaps we ought to defer not only until that study is completed which you recommended, but until the House gets itself in order so that it can make a comprehensive review of that matter?

Mr. Thomas. Mr. Chairman, I am extraordinarily reluctant to provide advice to the House in terms of its organizational structure but I can tell you, we do believe that the results of our study will be very helpful both for the executive as well as the legislative branches.

Mr. Meeds. In any event your joint study is not recognizing the jurisdictional lines, is it? I assume it will be a comprehensive study of total problems of Indian education?

Mr. Thomas. Well, it will be addressing the issue primarily of existing statutory duplication of authorities which provide for services that are being provided to Indian children and the Indian people. I should note that it is a congressionally mandated study and I think that therefore you all obviously will be interested in its consequences and results.

Mr. Meeds. The gentleman from Ohio.

Mr. Regula. No questions.

Mr. Meeds. The gentleman from the Virgin Islands.

Mr. de Lugo. No questions.

Mr. Meeds. Unless there is objection, counsel will submit to the Department of HEW the same questions which we are submitting to the BIA, recognizing that some will not be as applicable to you as they are to the BIA.

Mr. Thomas. We would be delighted to respond to those, Mr. Chairman.

[The questions and answers referred to follow:]

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., June 6, 1974.

Hon. STANLEY THOMAS,
Assistant Secretary for Human Development, Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. SECRETARY: During the Subcommittee hearings on S. 1017, I indicated that the Subcommittee would be submitting further questions to the Department on various aspects of the legislation.

I would appreciate your consideration and full response to the following questions for inclusion in the hearing record:

TITLE I

1. In section 4(c), defining "tribal organization", what do you feel is the import and effect of the phrase "or elected by the Indian population to be served by such organization"?

2. Section 102(c) authorizes the Secretary of HEW to require a tribal contractor to secure liability insurance. Do you feel that the provisions adequately protect the rights and interests of the general public and adequately protect the sovereign immunity of the tribes? What would be the cost factor to the tribes in securing such insurance?

3. Section 106(a) would exempt contracts under section 102 and 103 from the provisions of the Act of August 24, 1935, particularly regarding performance bonds. What effect would such a provision have on tribal contractors and their subcontractors?

4. Do you feel that the provisions of section 106(g) adequately protect the rights of individuals to be benefited by the particular program or service contracted from arbitrary or discriminatory action by the tribal contractor? What would be the remedy?

5. Assume that the tribal contractor, through mismanagement or otherwise, depletes the contract funds prior to the end of the contract period for some important service. Assume further that the contractor requests a retrocession pursuant to section 106(d).

Would the Department accept retrocession under those circumstances? If the Department accepted retrocession, how would they continue to provide this essential service?

I would appreciate your response to these questions as soon as possible.

Sincerely,

LLOYD MEEDS,
Chairman, Indian Affairs Subcommittee.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., July 18, 1974.

Hon. LLOYD MEEDS,
Chairman, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In testimony on S. 1017, the "Indian Self-Determination and Education Assistance Act," before your Committee on Monday, May 20, 1974, I stated that the Department of Health, Education, and Welfare would be proposing some technical amendments to the bill in the near future. In accordance with that statement we wish to submit the following technical changes for the Committee's consideration.

Grants to Indian Tribal Organizations

Section 104 of the bill would provide grant authorities to both the Secretary of Health, Education, and Welfare and the Secretary of Interior. The Commissioner of Indian Affairs in his bill report of May 17, 1974, expressed the belief that the present provisions of this section would be unduly restrictive in his ability to assist tribal governing bodies. Consequently, he proposed to the Committee a revision of section 104 which would authorize grant authority only for the Secretary of Interior. In transmitting that proposal, he also indicated that the Department of Health, Education, and Welfare would propose another provision relating to grants. Our proposed revision is as follows:

"Section (a) The Secretary of Health, Education, and Welfare may, in accordance with regulations adopted pursuant to section 107 of this Act, make grants to any Indian tribe or tribal organization for (1) the development, construction, operation, provision or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; (2) the planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.

(b) Notwithstanding any other provisions of law, any funds made available to a tribal organization pursuant to this section may be used by that organization for matching any other Federal grant which would contribute to the purposes for which the grant under this part was made."

We believe that this suggested section adequately provides for grant authority while maintaining a reasonable degree of flexibility in the administration of the overall health services responsibility. We wish to express our concurrence in the Commissioner of Indian Affairs' suggestion that section 109 of the bill (concerning grant appropriation authorization) be deleted. Such authorizing language is unnecessary in view of the proposed revised section above and the open ended appropriation authority contained in the Snyder Act (25 U.S.C. 13).

Comments on Department of Interior Suggested Amendments

In the Department of Interior, Bureau of Indian Affairs, bill report of May 17, 1974, a number of amendments were suggested. Several of these pertain solely to that Department's functions and responsibilities. We would defer to their decision on those suggestions. Some of the suggested changes, however, would also affect the functions and responsibilities of this Department's Indian Health Program. Generally, we concur with these proposed changes but three of them would be of sufficient importance to this Department to warrant additional comments. These comments are as follows:

Multiple Tribal Use of a Health Facility

This Department through its Indian Health Service (IHS) provides comprehensive health services to about 450 federally recognized Indian tribes and groups. These services are delivered through a system of 51 hospitals, 83 health centers and numerous health stations. Many of these facilities serve more than one Indian tribal group.

In certain instances where several tribal groups share a common health facility, there exists among the groups historically based, well established, and deep rooted rivalries. While the Government operates these shared facilities, health services are available on an equal basis to the members of all the federally recognized tribes. If, however, these shared facilities were to be operated by only one of the rival groups, there would be a probability that the total Indian population currently served by the health facility would not receive services on a fair and equal basis.

Apparently, the Department of Interior, Bureau of Indian Affairs, has envisioned the possibility of similar situations occurring in their areas of responsibility if a program or service activity is assumed by one group and that activity currently serves several groups. This recognition leads to a proposed change in the definition of "tribal organization" in section 4(c) of the bill. That suggested change would require each tribal group served to approve or at least not object to a requested contract or grant when it is made by only one of the groups currently served by the program or project. We wish to express our agreement in principle with the BIA proposed change. If it is adopted by the Committee and the legislation enacted, we wish to assure the Committee we would undertake whatever administrative measures as might be reasonably necessary to provide all affected tribal groups a full opportunity to react to the merits of any requests for a contract or grant when the request is made by a single tribal organization and services to others would be required. We believe this suggested amendment to be particularly important where several tribal groups currently share the use of a number of the Indian health facilities.

Transfer of Federal Employees to Tribal Organizations

The Department of Interior has proposed certain changes to section 105 of the bill. These proposed changes would substantially eliminate the need for Section 2(5) of H.R. 6853, the "Federal Employee Indian Tribal Organization Transfer Act." This Department generally concurs with the proposed changes providing the Committee accepts them as additional authorities to those already in section 105 of the bill. Our concern is that non-Indian health professionals would not be readily attracted to the possibility of becoming tribal employees. If this were the only option available, it could severely limit the ability of the tribes to operate health programs if health professionals would not accept such a transfer. We would, therefore request that the options available to these professionals be kept open so they could retain their status as Federal employees or transfer to tribal employment status as they might so desire. To close this option would, we believe, seriously jeopardize this Department's ability to recruit and retain health professionals who are already in short supply in the remote areas where most Indians live. The need for this flexibility and the need to provide continued protection of health professionals against malpractice claims, as is now provided for in the bill, and our reasons for suggesting that the Department of Interior's proposed amendments to section 105 be considered as additional authorizations to those already contained in the proposed legislation.

Emergency Authority to Rescind Contracts and Agreements

The Department of Interior has suggested that section 109 of the proposed legislation be revised to enable the appropriate Secretary to, upon notice to a tribal organization, immediately rescind a contract or grant where there is an imminent threat to the health and safety of the Indian people. This Department strongly endorses this suggested amendment. The bill (S.1017) in its present form does not relieve the Secretary of DHEW of his assigned responsibility to "conserve the health of American Indians." It provides authority to permit Indian and Alaska Native tribal organizations to assume greater autonomy in the management of their health care delivery system. The Secretary should, therefore, have the necessary authority to resume the management of the health delivery system if there ever should develop a situation where there is an imminent threat to the health or safety of the Indian people. This would be considered the maximum authority necessary if the Secretary is to fulfill his responsibilities as assigned by Congress.

The Office of Management and Budget has advised that the presentation of these comments is in accord with the program of the resident.

Sincerely yours,

STANLEY B. THOMAS,
Assistant Secretary for Human Development.

Mr. MEEDS. Now in a different regard, HEW is presently, through grants, conducting or having conducted a number of programs directed to Indian tribes and Indian organizations, is it not?

Mr. THOMAS. Yes, we are, Mr. Chairman.

Mr. MEEDS. Would you like to just for the record tell us about some of those programs and what is being carried out?

Mr. THOMAS. Mr. Chairman, I would be delighted to ask my colleague, Mr. Robert Howard, to expand on this, but the basic intent of our grant program out of the Office of Native American Programs for Indian tribes is ultimately to respond to what those tribes consider priority areas of concern in order to provide them with resources to fill any gaps in any of the human resource areas or economic development areas.

Perhaps equally important, Mr. Chairman, it is to provide the tribes with resources which are designed to strengthen their own ability to manage and plan and organize and deliver services.

Mr. MEEDS. What has been the experience of the Department of HEW generally in direct grants to Indian tribes with regard to programs that might otherwise have been carried out by HEW directly?

Mr. Thomas. Mr. Chairman, of course, the Native American Program was transferred from the Office of Economic Opportunity only this past August of 1973 but I would say that our general experience is that in many ways, having the Indian people themselves very much involved in determining how those programs should operate has been extraordinarily beneficial for the Indian people. There are those instances where they have requested technical assistance from us in one form or another and we are willing and able to provide that upon their request but I would say ultimately the fact that the Indian tribe itself has taken the leadership role, that I think has been very beneficial.

Mr. Meeds. Is it not true that what were formerly Indian Community Action programs are now being administered through ONAP?

Mr. Thomas. That is right. The Office of Native American Programs in the Department provides resources directly to the tribal government or to the tribal organization. Prior to the transfer of the programs from OEO, those resources flowed through the ICAP, the Indian Community Action Agency on that particular reservation.

Mr. Meeds. In terms of some of the apprehensions indicated by the Commissioner and his colleagues, have you found generally that those programs through ONAP have been well carried out. Are they expended within the guidelines which are set forth, is there adequate personnel, and, just generally, do they function fairly well?

Mr. Thomas. Yes, Mr. Chairman. We believe they do function fairly well. Obviously on an annual basis we review the grants. We have a staff that is regularly interacting with the grantees and as a general proposition, Mr. Chairman, we would very much say that the programs are effective.

Mr. Meeds. Do you think it is necessary to retain, at least through guidelines, some general objectives for which the Secretary of HEW should be responsible.

Mr. Thomas. Well, Mr. Chairman, over the past several months we have been communicating with tribal government leaders and other Indian groups and organizations with respect to the Native Americans program with the idea in mind ultimately that we would have to promulgate regulations and guidelines for the administration's recently introduced statutory request for an extension of the program. And so we anticipate that should our legislation be enacted, that guidelines and regulations would be promulgated after consultation with Indian people.

Mr. Meeds. Is not the study on Indian education due in September of this year?

Mr. Thomas. That study is due September 30 to October 1. That is not related to the issue that we are discussing. That is under the Office of Education.

Mr. Meeds. Very well, thank you sir.

Mr. Thomas. Thank you, sir.

[The full statement of Mr. Thomas follows:]

Statement of Stanley B. Thomas, Jr., Assistant Secretary for Human Development, Department of Health, Education, and Welfare

Mr. Chairman, Members of the Subcommittee, it is a pleasure to appear before you today to testify on S. 1017, which seeks to assure to Indian people the right of self-determination and to obtain reforms in the education of Indian children.

1. GENERAL POLICY

As you know, the Administration is deeply committed to Indian self-determination. The President stated in his message to Congress, on July 8, 1970, transmitting his "recommendation for Indian policy":

"For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.

"This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing to assume administrative responsibility for a service program which is presently administered by a Federal agency."

The Department of Health, Education, and Welfare is vitally interested in the enactment of legislation which would promote and encourage further self-determination for the Indian people to attain the ultimate goal of "Indian solutions to Indian problems."

As we advance toward self-determination, however, we must also be sensitive to the need for maintaining Federal support and concern for the Indian people. As we strengthen the Indian's sense of autonomy, we must be sure not to threaten his sense of community and tribal life. That means making it clear to Indians that they can become independent without losing their unique relationship with the Federal Government and that self-determination and the assumption of control of HEW programs and services by Indian tribes represents a reinforcement rather than a termination of this unique relationship.

2. ADMINISTRATIVE ACTIONS

Before I discuss the bill under consideration, I would like to quickly highlight a few of the things being done by our Department under existing mandates to advance Indian self-determination.

A. Office of Native American Programs

The Department established the Office of Native American Programs under the Office of the Assistant Secretary for Human Development last August. This Office was transferred from the Office of Economic Opportunity, and with this transfer efforts of the Department in Indian affairs increased significantly. In addition to responsibility for program administration, the Office of Native American Programs assumed the dual role of principal advisor to the Secretary on Indian affairs and advocate for the Indian population on Departmental policy.

The Office of Native American Programs has made appreciable progress in laying a foundation for promoting Indian self-determination based on representative Indian consultation. The Office arranged a series of nine meetings, five on Indian reservations and four in areas with appreciable Indian population, to invite Indian input on the functions and policies of the Office. The product of these meetings, at which over 850 representatives of Indian tribes and organizations participated, were a set of issues raised by the Indian people as well as a number of recommendations on resolving the issues.

B. Office of Education

Over the years, Office of Education assistance benefiting Indian children and adults has been substantial. In fiscal year 1974 it is estimated that $140 million in the Office of Education obligated funds will benefit Indians. This represents an increase of 17 million dollars over the amount provided in fiscal year 1973.

Much of the increase has resulted from implementation of Title IV of the Education Amendments of 1972, known as the Indian Education Act. Through the implementation of the Act, increased consultation between local education agencies and Indian communities has occurred. Indian people are now involved in making decisions that affect the education of their children. In fiscal year 1974 the Department will have provided $40,000,000 under Title IV alone for programs to improve educational opportunities for Indian people.

C. *Indian Health Service*

The Indian Health Service has made notable progress in improving the delivery of health services to American Indians and Alaskan natives since 1955 through the growing participation of the Indians and Alaskan natives in the planning, implementation and evaluation of health service programs. Some examples of tribally managed health efforts include the operation of community health services activities such as alcoholism projects, family planning programs, maternal and child health programs and health screening and nutrition programs. Progress is illustrated, also, by the development of the community health aid programs in Alaska and the Community Health Representative Program in other states which enable tribal groups to directly provide health services in their communities by employing workers trained by the Indian Health Service, the Indian tribes are now a major employer of health service workers formerly in the Indian Health Service. These tribal employees now number about one-fifth of the health workers on reservations.

II. PROPOSED LEGISLATION

With this background, Mr. Chairman, I would now like to turn to S. 1017, the bill before the Subcommittee at this time. Title I of the bill contains provisions designed to further the control exercised by Indians over programs currently operated by the Federal Government. Sections 102 and 103 direct the Secretaries of Health, Education, and Welfare and Interior upon the request of any Indian tribe, to enter into contracts with any tribal organization whereby they would plan, conduct and administer Federal Indian programs.

While we prefer legislation proposed by the Administration as more comprehensive than S. 1017, we endorse any legislation which effectively promotes Indian self-determination. Therefore, we recommend enactment of Title I.

We note that some revisions have been made in this Title since Under Secretary Carlucci testified before the Senate Subcommittee on an earlier version of S. 1017 in June of last year. For example, the current legislation directs rather than authorizes, the respective Secretaries to contract with tribal organizations. Additionally, safeguards have been built into Sections 102 and 103 to assure properly administered and operated programs.

While we find these revisions to be positive steps toward self-determination, we would like to propose some technical changes and will forward them to the Committee by letter in the near future.

Section 104 authorizes the Secretaries of Health, Education, and Welfare and Interior, upon request of tribal organizations, to make grants to tribes for planning, training, evaluation and other activities designed to make it possible for such tribal organizations to enter into contracts as provided in Sections 102 and 103. We would recommend that this section be clarified to limit the Secretary's role to Indian health activities which is the intent of this section.

In conclusion, Title I of S. 1017, as revised, has been strengthened considerably over the 1973 version of the bill and contains useful authority for advancing Indian self-determination.

Title II contains provisions affecting the education for Indians. There already exist at this time various authorities under which Indian education is provided, which are themselves duplicative and overlapping. Indeed, we are presently joining the Department of Interior in a joint study mandated by the Congress to examine closely the various Indian education programs now underway. Our study results, which will be completed by September 30, 1974, will include legislative proposals, if any are needed, designed to remove the existing duplication. We feel that it would be highly undesirable at this time to create new authorities for Indian education which would cause even more duplication as Title II would do. Therefore, we recommend that the Congress defer action on Title II until such time as we have completed our study and can make recommendations to the Congress.

Duplication of present HEW authority exist in parts B and C of Title II. Part B would authorize financial assistance to institutions of higher education, non-profit organizations or agencies, and Indian tribes and organizations to provide fellowships to carry out programs and projects to improve qualifications of educational personnel serving Indians. Authority for such assistance already exists under section 810 of the Elementary and Secondary Education Act which has a section specifically on preparation of teachers of Indian children. Additional authority exists under the career opportunities program (P.L. 90-35 Education Professions Development Act, as amended). Part C authorizes Federal assistance in the construction, acquisition, and renovation of school facilities in public school systems which serve Indians on or near Indian reservations. Authority for such school construction presently exists under P.L. 81-815. In fiscal year 1973 the Department of Health, Education, and Welfare received $15 million for such efforts. In fiscal year 1974 this Department received $30 million, an increase of 100%. Approximately $4.8 million in fiscal year 1973 was obligated for construction of facilities to meet the needs of Indian children. Of the $30 million appropriated in fiscal year 1974, approximately one-third is obligated to Indian programs—more than double the amount in 1973.

We believe that responsibility for school construction should not be divided further between two agencies of the Federal Government, the Department of Interior and the Department of Health, Education, and Welfare. Such division of responsibility for construction of non-Federal facilities would fragment authority and create confusion among Indian people.

We hope that the Congress will avoid this additional duplication.

Mr. Chairman, that concludes my testimony. I will be happy to respond to your questions.

Mr. Meeds. Our next witness is Charles Trimble, executive director, National Congress of American Indians. We are delighted to have you back before the committee. If you have a prepared statement, you may proceed.

STATEMENT OF CHARLES TRIMBLE, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. Trimble. Yes, sir. If I may I would like to because it is not a very long statement, sir. I would like to read it.

Mr. Meeds. Please proceed.

Mr. Trimble. Mr. Chairman and members of the committee: My name is Charles Trimble, executive director of the National Congress of American Indians. On behalf of the officers and members of NCAI, I express gratitude for this opportunity to testify before you regarding this important legislation promoting Indian self-determination and educational assistance.

Both Indian self-determination and educational reform have been priorities of Indian people for some time now. We recognize many of the provisions of S. 1017 as direct response to Indian concerns expressed by Indian people over the years. We commend the 93d Congress for its responsiveness.

It is our understanding that the remaining months of the 93d Congress will be pretty much taken up by impeachment proceedings, campaign reform and governmental reform, and one of the most intense election campaigns in recent history. Not many more bills will be enacted, we understand, because of these preoccupations. In light of this, the executive committee of NCAI recently met and established its top Indian legislative priorities. This bill was among the very top. We urge its passage, amended to suit the National Indian Community, within the waning months of the 93d Congress.

In title I, S. 1017 seeks to promote Indian self-determination through extensive provisions for contracting, by Indian tribes and tribal organizations, services provided by the Federal Government. In addition, title I provides for grants for planning, training, and other measures designed to help tribes in their contracting efforts: It provides for the detailing, at tribal request, of civil service personnel to assist tribes in the initial stages of the contracts; and it seeks to loosen unwieldy regulative restrictions to enhance the transfer of service responsibilities to Indian tribes.

Title I embodies essentially the same provisions as S. 3157 which passed the Senate but failed to pass in the House during the 92d Congress. NCAI supported S. 3157 in 1972, and supported title I of this current bill before the Senate Interior and Insular Affairs Committee in 1973. Our support for title I remains. However, we would like to offer a proposal for possible addition to title I.

Section 102(a) spells out certain considerations for the Secretary in his authority to decline to enter into any contract requested by a tribe, and I quote from that:

"* * * In arriving at his finding, the Secretary shall consider whether the tribe or tribal organization is deficient with respect to (1) equipment, (2) bookkeeping and accounting procedures, et cetera. * * *"

We are particularly interested in the consideration of deficiency of equipment on the part of the tribe. Such deficiency of equipment not only weighs on the decision of the Secretary to enter into certain contracts, but also weighs on the tribes decision or ability to request a contract.

The intent of this bill to help the tribes could be greatly hindered by the inability of tribes to acquire the necessary equipment to perform certain functions requiring heavy equipment.

It is our understanding that other local governments and organizations are eligible to receive surplus Federal property, yet Indian tribes, which are certainly recognized as governmental entities, are not eligible. Indian tribes are only eligible to use surplus equipment only when a Federal agency is willing to pick up the equipment on its account and let the tribe have it on a "use permit."

The agency on whose account the equipment remains is reluctant to maintain it, since that agency gets no use out of the equipment while it is in the hands of the tribe. The tribes do not accept the burden of repair and maintenance since they generally cannot afford it, and the property does not really belong to them. In many instances, we understand, reservation agencies are becoming virtual bone yards for inoperative equipment.

We recommend that the feasibility of including language in the bill to allow tribal governments to qualify for eligibility to receive surplus Federal property be investigated, and we offer our assistance in devising such a provision.

We would also like to comment on another impeding factor in tribal contracting, and this impediment is less subject to legislative remedy. This impediment is bureaucratic paternalism.

In past efforts to encourage tribal self-determination through contracting, a major drawback to success has been the lack of backup and administrative funds. Tribes that have contracted have been unable in many cases to renegotiate the contracts taking into consideration the cost increases due to soaring inflation and contingency factors. In many cases, tribes have not been aware of the immense costs of administration and have not been able to get the funds for administration. These factors have resulted in frustration and failure and, ultimately, in the tribes retrocession of the contracted services to the Federal Government.

Failure and retrocession by tribes pleases paternalistic bureaucrats who feel threatened by tribal self-determination. It is these very self-serving bureaucrats who instill fear in the tribes by equating self-determination with termination, and who love to tell the tribes, "I told you so," when the tribes have failed because they've never had a decent chance for success at the outset due to lack of adequate funds.

Recently the Interior Department atempted to cut back on the number of positions in the Bureau hierarchy and to convert the savings resulting from the cutbacks into additional moneys for tribes that heretofore wished to contract but lacked the funds, and to provide additional funds for administration of the contracts by tribes who had already entered into contracts.

This move was devised by members of the staff of Assistant Interior Secretary Lawrence Lynn. These staff members were long standing advocates for tribal self-determination, and, consequently, were enemies of the area directors of the BIA and old-line bureaucrats.

The area directors and old-line bureaucrats immediately informed the tribes, despite memoranda from the Commissioner to the contrary, that Interior was forcing contracting on the tribes and was forcing the cutback of much-needed personnel, particularly critical positions at the agency level. Now, we understand that the area directors are setting out to cut back critical positions at the agency level and to keep the moneys in their coffers if the tribes decline to contract. Indian tribes are being punished in the cross-fire between BIA bureaucrats and the Department of the Interior.

Such is the prevailing paternalistic attitude in the BIA. The Honorable Peter MacDonald, chairman of the Navajo Tribe, once observed that what the BIA needed most was a change in attitude, and that he was not sure that attitudinal change could be legislated. Only you have the oversight capabilities over the BIA and we offer our help in seeing that the intent of this bill is carried out.

Overall, Mr. Chairman, we heartily endorse title I of this bill in its intent and extensive provisions to help tribes serve their people. But, is there nothing we can do with the paternalistic tyrants who would subvert the best intent of Congress to emancipate the tribes from their heavy hands?

Mr. Chairman, I would like to get away from my prepared statement for a minute. I noted that both Commissioner Thompson and Assistant Secretary Thomas referred to and explained their deep concern for duplication of effort among agencies serving Indian people, but I think that this duplication comes up through the Indians requests and pleas to you to devise programs, because the Indian people are still not being served regardless of duplication and perhaps the real study should be of meeting the needs of Indian people regardless of what it takes instead of the inefficiency of programs and this concern for duplication of effort.

Title II attempts to deal with much-needed reform of the Johnson-O'Malley Act of 1934 for the education of Indian students in public schools. It calls for the preparation of professionals in Indian education; for school construction; an internship program for Indian youth; research and development in Indian education; and for further study into present law and regulations with the view toward future legislative remedy.

Title II is truly a comprehensive and commendable effort in Indian educational advancement, and any of the above provisions would merit exclusive legislation. Sadly, the great merits of title II were obscured by the turbulence over the controversial provisions of part A.

We all recognize that reform is greatly needed in the implementation and administration of the Johnson-O'Malley Act, and Senator Jackson and his staff sincerely attempted to respond to massive discontent with the way the BIA, the States, and many local school districts abused the administration of the Johnson-O'Malley Act. The administration of the Johnson-O'Malley Act came under fire in the 1969 report of the Special Subcommittee on Indian Education chaired by the late Senator Robert Kennedy. Later, it was strongly criticized in the NAACP legal defense fund's study entitled "An Even Chance" and by the Comptroller General and many tribes and Indian organizations. The Johnson-O'Malley Act, or the administration of it, certainly deserves reform.

As originally designed, part A sought to provide a formula which would assure that States met their full financial support obligations to school districts eligible for contractual support from title II of the act, thus, resulting in equitable distribution of available funds provided therein. However, many respected Indian leaders, including knowledgeable Indian educators, felt that such requirements as spelled out in the proposed formula would prevent or discourage many school districts from participating due to the district's inability, or in many cases, unwillingness, to meet additional tax revenue requirements to bring them up to the five most comparable districts with non-Indian enrollment.

NCAI shared the feelings of serious apprehension over the formula called for in part A, and expressed those apprehensions before the Senate Interior and Insular Affairs Committee in June 1973.

We are pleased that the legislative proposal now before you pays heed to the near-universal opposition of Indian tribes and organizations in regard to part A and does not impose the formula provisions previously called for in S. 1017.

We feel that the proposed amendment to the act of April 16, 1934 (48 Stat. 596) is satisfactory in intent to provide control of the Johnson-O'Malley programs to the Indian communities affected. We would suggest, however, that a standing commission comprised of Indian people be established to effectively monitor the Johnson-O'Malley Act on a national scale and provide recourse to Indian communities who feel they are not being effectively served by the Johnson-O'Malley Act programs. Such a commission could meet as a tribunal at scheduled intervals and would not be at great expense to the Indian program budgets. Such a commission, with congressional sanction and authority, could be very effective in assuring full compliance to the intent of Johnson-O'Malley, and would be within the spirit of this bill for Indian self-determination.

Part A, section 5(a) stipulates that, whenever a district directly ~~affected by any~~ such contract described in the bill, where the local school board is not composed of a majority of Indians, an Indian community education committee shall be established to "participate fully in the development of, and shall have the authority to approve or disapprove programs * * *" We commend you for this provision and the strength of it.

However, we have noted the absence of any provisions for any statewide Indian committees, as proposed in the original version of the bill. The functions of such a committee would be very important, particularly in part B, the development of professionals, and in part E, educational research and development. Parts B and E will take place, undoubtedly, in colleges and universities which are generally remote from Indian access. In such remote settings these institutions often take unlimited license with what they "think" is good for the Indian people.

We have supported from the outset the provisions of parts C, D, and F, but particularly the youth intern program. We are always concerned for our youth and such intern programs have been very successful in the past.

We commend the respective committees of both Houses of Congress for their initiative embodied in S. 1017. We urge its speedy passage in the 93d Congress, subject, of course, to the satisfaction of Indian tribes and organizations.

Mr. Chairman, that concludes the testimony of the National Congress of American Indians. Thank you.

I would be happy to answer any questions.

Mr. Meeds. Thank you very much, Mr. Trimble. I note that throughout your testimony, particularly as pertains to the Johnson-O'Malley provisions and even the proposed changes of this legislation, somewhat the same type of apprehension which I think I have with regard to present and future administration of Johnson-O'Malley.

First, would you agree with me that had a tighter definition by the Congress in this legislation as to who is eligible for aid under Johnson-O'Malley might solve at least a substantial portion of that present problem?

Were you here when I used the illustration of the Gallup school?

Mr. Trimble. No, sir. I am sorry. I was not here.

Mr. Meeds. Well, I am sure you are aware that Johnson-O'Malley funds are being used for non-Indian children.

Mr. Trimble. Yes sir.

Mr. Meeds. The suggestion is given that unless these programs are carried out, Indian children who would benefit from them would not benefit from them and therefore the local responsibility to Indian children is, in effect, at least watered down.

Mr. Trimble. Yes, sir. I agree with you entirely.

Mr. Meeds. Doesn't that come initially from the Bureau's definition of "for the benefit of Indian children" insofar as they are not as restrictive as they ought to be in defining it?

Mr. Trimble. I believe that the Bureau is not. It is their job and I think that they are at the heart of much of their problem in the administration of Johnson-O'Malley funds.

Yes, sir; I do think that a tighter definition, although I believe the definition is there, that greater oversight by Congress to assure that the Bureau of Indian Affairs is living up to that definition is needed.

Mr. MEEDS. Now they tell us they are working on new guidelines for Johnson-O'Malley, but the fact is that they didn't even start thinking about this until Senator Kennedy's committee and my subcommittee began asking questions about the administration of Johnson-O'Malley. I think the NAACP, for instance, had a tremendously fine investigation of expenditure of those funds. And I don't think personally that a revision by the BIA of the Johnson-O'Malley guidelines would cure the problem. Quite frankly, I think that no change in the administration of Johnson-O'Malley will come about unless the Congress acts. Would you agree with that?

Mr. TRIMBLE. I agree with it, sir, and I believe that they are going very slow, and I don't know if it is deliberate or not, but in any kind of reform of Johnson-O'Malley, and show a hesitancy to listen to Indian people or to consult with Indian people.

Mr. MEEDS. And I think that I agree with you that it is essential here to do more than create some local advisory board which must vote on the local expenditure of Johnson-O'Malley funds. What will occur in that instance is what we saw in our studies on education where the local board was given the type of guidelines by the State superintendent of the public instruction of children, with BIA working in tandem under which it was impossible for the board to come up with anything except programs which benefited not only Indian children, but also a number of other children in the local school districts. The board's prime concern should have been for Indian children, but under the guidelines given, it was impossible for them to do otherwise.

I see you suggested a creation of a national advisory board and/or State advisory boards. I think this would be very helpful because these people would not be as subject to the dictates of a local superintendent or a local BIA Director, and it could be very helpful on a national or State level in forcing local Indian advisory groups or local Indian school boards to make some pretty tough decisions.

Mr. TRIMBLE. I think the national one is important in that I think the local communities must have some resource and they apparently aren't getting that resource under the Bureau of Indian Affairs, under the Department of the Interior.

Mr. MEEDS. Now I understand that your initial opposition to the provisions of a Senate bill which, very generally required local tax effort for the index to determine whether Johnson-O'Malley funds were being properly spent, was based on your feeling that it was unworkable and it might sink the entire bill, is that correct?

Mr. TRIMBLE. Not that it would sink the entire bill, but that it wouldn't work after enactment.

We have received numerous reports from the Native American Rights Fund, from Mr. Myron Jones, who is scheduled to testify today, and from people whose opinions we do respect and they were just about unanimous that they didn't feel it would work effectively —

Mr. MEEDS. I am sorry, I can't hear you.

Mr. Trimble. We received many reports on that provision. Our fear wasn't that it would sink the bill, but it would be unworkable after the bill was enacted. We received many reports from the Native American Rights Fund, from the organization of Mr. Myron Jones, who will testify later, and from a number of others and they were just about unanimous in their real doubts that the system would work and there would be incentives for the States to cooperate to the extent that to raise taxes is a highly political issue.

And also we believe that with proper supervision, if people lived up to the intent of Johnson-O'Malley, and certainly with the amendments that you recommended, that Johnson-O'Malley is a very good piece.

Mr. Meeds. I think you would probably agree with me that there are, as the people from HEW have testified, programs within HEW and other agencies which lend themselves to the problems of school construction, of training professionals and paraprofessionals in Indian education, in the use of funds for relief programs and so on. However the fact is, is it not, that while authority may exist for some of, if not all, these programs it has been very sparingly used in the other departments?

Mr. Trimble. That is precisely it, sir.

Mr. Meeds. For instance, in Public Law 815, construction of school facilities for Indian use has been very minimal. And I think the testimony here was that there was somewhat over $400 million in requests compared to the less than $25 million expenditure in the last fiscal year. Anyway, that gives you some indication of the failure of the Department to use the authority they have here.

If we could, in some way, get the departments to utilize more of the authority they already have, I assume you would be in favor of that happening; but would you prefer that over passage of this legislation, which then might face the same kind of problems?

Mr. Trimble. Well——

Mr. Meeds. This is with regard to title II and those portions dealing with the Johnson-O'Malley Act.

Mr. Trimble. Well, there are tremendous presumptions in the statements that both Commissioner Thompson and his staff and Secretary Thomas referred to in the duplication of effort end of it.

Those presumptions are that Indian people are being served adequately to the full authority of the bill. That is simply not true.

And as long as that happens, I think perhaps we should support legislation and hope for enactment of legislation that would assure greater services to the people.

Mr. Meeds. All right. Just one final question. Section 4 defines "Indian" to be "a person who is a member of an Indian tribe."

Do you think that is a sufficient definition of the word "Indian" for the purposes of this act?

Mr. Trimble. Well, I think that is contention on section 4(b) which states "Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of the status of Indians."

I currently concur with that and I am reflecting the standing attitude in regard to this of the National Congress of American Indians.

Mr. Meeds. But under that definition or even the combination of definitions, aren't there a great number of Indian children who would be excluded from consideration under Johnson-O'Malley?

Mr. Trimble. You mean those not adjacent to reservations and various others like those people in the urban communities and various others?

Mr. Meeds. Well, even if the Department broadens their scope, as they tell us they are going to, how could it include a significant number of Indian children in for instance the Los Angeles school system who might not maintain any affinity to an Indian tribe as defined in section 4(b)?

Mr. Trimble. Mr. Chairman, the only way I can answer that is that the National Congress of American Indians does feel very strongly about the condition, about the situation of off-reservation Indian people particularly those far from the Indian reservations, but we do recognize that there is a problem, and the tribes have explained this problem over and over, of dilution of funds and authorities. And unless we can get assurance that budgets will be increased, that program authority will be increased and everything else so as not to threaten the already limited funds that federally recognized tribes now have access to, I think that we really can't support something like that.

However, we will support and we will work with Congress in an attempt to devise programs for our people.

Mr. Meeds. The gentleman from the Virgin Islands.

Mr. de Lugo. Thank you, Mr. Chairman. I would like to commend you, Mr. Trimble, for your excellent statement. I think you have been a very fine witness. I was interested in your statement on page 4 in which you note the absence of any provisions for any statewide Indian committees as proposed in the original version of the bill and you point out that this committee, or at least these types of committees, in your judgment, the statewide committees are particularly important in relating to part B, the development of professionals, and part E, educational research and development and you further point out that parts B and E will take place undoubtedly in colleges and universities which are generally remote from Indian access. In such remote settings, these institutions often take unlimited license with what they think is good for the Indian people.

Would you expand on that?

Mr. Trimble. Yes, sir. I think Indian people have been faced with this for a long time. There are many Indian experts, as opposed to expert Indians, let us say, who understand the "Indian people" and who devise programs for Indian people without good consultation with the Indian communities and the Indian people then are stuck with these programs.

And the colleges also I think really benefit and perhaps exploit these programs of tremendously high overhead. And I think that both of these situations could be monitored by a representative committee of Indian people to assure a certain amount of uniformity and coordination because there are many school districts on reservations where one reservation could be affected by another school district.

And in light of this I feel that there should be that coordination amongst them for programs that will benefit the entire statewide group.

Mr. DE LUGO. I think that is a good point. I see I am acting chairman for a moment. I will defer to my colleague from California.

Ms. BURKE. I am sorry. I didn't have an opportunity to hear all of your testimony. I have had a chance however, to read your statement, Mr. Trimble, and at this time I have no questions. I want to commend you on the preparation of the excellent statement you presented to us.

Mr. TRIMBLE. Thank you.

Mr. DE LUGO. Well, thank you very much, Mr. Trimble.

At this time we are going to adjourn until 2 o'clock this afternoon.

[Whereupon, at 12:05 p.m. the subcommittee adjourned, to reconvene at 2 p.m. the same afternoon.]

AFTERNOON SESSION

Mr. MEEDS. The Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs will be in further session for the taking of testimony on S. 1017 and related matters.

Our first witness this afternoon is Mr. Myron Jones of Indian Education Training, Inc., in Albuquerque, N. Mex.

Please come forward, Myron. Good to see you again and good to have you before this committee.

I see you have a prepared statement. You may read it or summarize it.

STATEMENT OF MYRON JONES, INDIAN EDUCATION TRAINING, INC., ALBUQUERQUE, N. MEX.

Mr. JONES. All right. I would like to just read small parts of it and summarize it.

Chairman Meeds and members of the Indian Affairs Subcommittee, my name is Myron Jones. I'm a Tuscarora Indian and the director of Indian Education Training, Inc., located in Albuquerque, N. Mex. I thank you for the invitation to testify before this subcommittee. I would like to focus all my testimony on those issues raised by this legislation—S. 1017—that would affect the Johnson-O'Malley Act, that is, title II, part A.

I would like to do this not because I am not concerned about other parts of the bill but because it is the Johnson-O'Malley Act I really feel comfortable with.

You may remember, Congressman Meeds, more than 2 years ago I testified before your Education Subcommittee in Gallup and I want to give a progress report since then. I wanted to start out with a couple of things that I think are good news and then get to the bad news. The good news is that since that time—first, let me give you some background. At the time, there were tribal contracts in North Dakota, South Dakota, and Nebraska. Since then there have been tribal contracts in Minnesota, one in New Mexico for the Pueblos and Apaches, and probably one next fall for the Navajos also. I guess there is an actual contract in Alaska, the Johnson-O'Malley contract with the Alaska Federation of Natives. There are contracts in Minnesota and

Michigan and a pending contract I understand in Wisconsin. And so in some respects at least Indian self-determination has become a fact and not simply a speech.

In our own State in New Mexico, the State developed a budget form which is the best that I have seen. I have a copy of that on the appendix. They have the programs laid out so that you can compare Johnson-O'Malley and title I programs with the basic school budget.

You can tell at a glance whether or not the school is supplanted or whether or not they are in fact using Johnson-O'Malley and title I funds——

Mr. Meeds. Pardon me a minute. What are you referring to?

Mr. Jones. The public school budget, the New Mexico form.

Mr. Meeds. Well, is it enumerated? Oh, here it is.

Mr. Jones. Yes.

Mr. Meeds. Without objection, the public school budget for 1973-74 for the State of New Mexico, which is in your statement, will be made a part of the record.

Please proceed, sir, and describe it please.

Mr. Jones. OK. The other good news is I think that more and more the Johnson-O'Malley committees have become aware of their basic legal rights and have become aware of some of the program possibilities under Johnson-O'Malley and——

Mr. Meeds. Pardon me again. Were you going to illustrate this?

You pointed out a form. Did you complete your point?

Mr. Jones. Yes. Oh, yes. In this budget form I just wanted to show through the use of this form that you can compare Johnson-O'Malley use with title I use with the basic school budget. You can tell simply by looking at it, simply by counting the number of people, whether or not a school district is using Johnson-O'Malley to meet State minimum standards.

That is to say the budget form was meant as a protective device against supplanting and it has been very effective that way.

Mr. Meeds. How does it show that? Do you want to describe that?

Mr. Jones. OK. Well, let me take on the second page, the 200 series, this is page 2 of the budget form, and that is page 4 of the appendix on page 2 of the budget form, under "Teachers" it shows how much is being spent under Johnson-O'Malley for teachers, and then the total amount that is being spent for teachers. It also lists the number of people here. This particular one doesn't have the title I budget filled in yet, but because of this anyway, you can tell by comparing the salaries and the number of teachers involved whether or not Johnson-O'Malley and title I are in fact supplementary.

Mr. Meeds. Mr. Jones, I guess maybe I am a little dense but you are going to have to explain this proposed budget to me a little more closely so that I can understand how you do that.

Mr. Jones. OK.

Mr. Meeds. For instance, estimated expenditures, is that $16,220?

Mr. Jones. Yes.

Mr. Meeds. For 194 persons?

Mr. Jones. No, oh, I am sorry. That is for Johnson-O'Malley alone.

The total expenditure for teachers is in the line next to it, which is $1,806,071. The total number of teachers is 194. You have to do a little quick calculation because in New Mexico, $16,220 means two teachers. In Alaska I guess it would mean one.

Mr. MEEDS. Right.

Mr. JONES. In California I suspect it might mean only one also. And you can see that that was what they did in 1972–73.

You come over to the next column and you see the 8,490. They are now going to have only 1 teacher under Johnson-O'Malley and a total of 221 teachers. Now you subtract one teacher from the 221 and you can see whether you have enough Johnson-O'Malley teachers to meet the State minimum standards.

Now to me supplanting has been one of the great traps of Johnson-O'Malley and one of the things the Bureau simply has not been able to administer. The Bureau's standard position has been, well, we will just ask the parents and that is the fairest way.

But the fact is that is not a very fair way. You can say to the parents: What do you need in your school system? The parents will say what we really need is better health care and so on. And the school will say fine, we will hire two more nurses and make them Johnson-O'Malley nurses. You don't find out until several months later that in fact the school had to hire those nurses to meet minimum standards anyway.

So asking the parents has just been a guise for supplanting.

Things like this budget form protect against that and encourage parents not to focus on Johnson-O'Malley but to focus on it in the context of other school expenditures.

Mr. MEEDS. So you are in effect saying that this should indicate to us that when there is an increase in the total budget and a decrease in Johnson-O'Malley funding as a portion of that budget, Johnson-O'Malley is not being used to supplant the proposed budget as it was at least presumably in the 1972–73 budget?

Mr. JONES. That is right. You can make a comparison between one year and the next.

Mr. MEEDS. Couldn't you also say that it also shows that there has been a decrease in Johnson-O'Malley activities?

Mr. JONES. You could say that but let me show you something that has happened under this budget.

If you go to page 8—and this is something that we were complaining about 2 years ago—if you go to page 8 of the budget form——

Mr. MEEDS. Page 8?

Mr. JONES. Right. It is the long sheet that looks like this [indicating]. You come down this column of "total budget" and then you have "total reserves" and "balance unbudgeted," and this is a projection for the next year and you see that this school budget had a balance unbudgeted of $869,349. That is over and above an emergency cash balance account. And that is simply money that they don't plan to spend in any way. It is really savings. In fact that is what they do with it: they deposit it in a savings account. This is an estimate.

The actual cash saving on June 30 of last year was $2.1 million. That is what they had in the bank.

Now we get a very interesting situation with Johnson-O'Malley. At the budget hearing when they were projecting a surplus of $869,349—and incidentally this district is 87 percent Indian by the way—87 percent Navajo to be specific—and with this cash surplus they asked for $50,000 in Johnson-O'Malley funds so that they could develop a curriculum appropriate for Navajos. At this point we said: Who have you been teaching, Martians? The school is 87 percent Navajo. It is the basic job, I feel, Mr. Congressman, of the school to develop a curriculum for Navajos. Why do you need Johnson-O'Malley funds? Why don't you use your own money at the school?

We asked this at which point they said: You don't know State law. We cannot spend cash surplus without permission of the State budget director.

Now at that point the State budget director said: I give you permission. If you want $50,000 I will give you $150,000 of your own money *for the next three years to develop a curriculum for Navajos.*

My point is, Mr. Chairman, they refused it. They refused $150,000 from their own cash surplus and got $50,000 of Johnson-O'Malley to develop a curriculum. In my view that is very very clear supplanting.

We also had an odd situation where normally you would expect high school teachers, high school principals, to be fighting for greater funding but the principals who were at this meeting got up and fought against using the cash surplus.

The only possible justification for fighting against it is that if they can maintain the cash surplus they can convert into construction purposes every couple of years and thus avoid a new bond issue.

Now this district was sued. Gallup was sued and Gallup lost their lawsuit and at the same time the suit was filed against this district.

That was the Denent Clarence suit. It was settled out of court. And part of the settlement was they had to spend all but $600,000 of their $2.1 million surplus.

This kind of surplus issue, it has never been handled before in Johnson-O'Malley because cash surplus at least in New Mexico is never discussed at any budget hearings. You can have all of the public budget hearings you want but no one had ever thought to go into the question of money that was not planned to be spent.

We have raised this question with the Bureau saying: How can a district possibly claim to have unmet needs when they simply refuse to use their own money?

And the Bureau's position was and is: It is not our business whether they use their money or not.

This is one of the things that we hope to have clarified through regulations and this is an unusual situation of course.

There are not that many very wealthy Indian districts but this is in the Four Corners area of New Mexico where they collect very heavily on 874 and also collect off improvements on Navajo land.

Also the natural gas last year paid $2 million to school districts for natural gas on Navajo land alone. So you get districts that do have big gas and oil developments with taxes coming from that plus 874 and they can build up surpluses like this. That is an issue that has not been handled.

Now the other good news—oh, I am sorry, that was the bad news. We have good and bad news.

The good news is that a number of people including our organization had been fighting the Bureau for years to try to get them to change their regulations as discussed this morning. Two years ago I think the

Bureau was working toward their 14th draft of regulations changes. In fairness to the BIA I will say that some genuine reforms did clear the Bureau several times and were kicked back by the Department of the Interior at the Under Secretary level.

One of the problems that we always ran into with reforms was that one Indian group was played off against the other.

There was always this question raised, which you were talking about this morning, the question of eligibility, of who should be able to receive Johnson-O'Malley funds. Well, our own argument has been that Public Law 874 takes care of the tax exempt question. It is totally inappropriate for Johnson O'Malley to be used in lieu of taxes in any way.

What the Bureau did was to go to Indian groups always and say: Would you like the allocation you had this year or would you like to share it with your urban Indians and get half next year?

And the answer was we simply would like what we have this year or at least we want a guarantee of increased funds.

So always two issues were confused, the inappropriateness of the use in lieu of taxes, which was confused with the fact of whether or not there would be an expanded service population.

This year because there was a new commissioner and because the commissioner said that education was his number one priority a number of organizations decided to try all over again. We get together a form, which has simply become known as the "red regs." I have submitted a copy of the red regulations.

We now have the backing of close to 60 organizations and they are listed. We have the backing of the Navajo Tribe. They have one exception and that is if Johnson-O'Malley is to serve a large population, they want a funding guarantee. They want a fail safe clause in effect that will save out, if there is a larger service population, where something will be guaranteed at its present level.

But I think what it is important about this is that we do have the broadest consensus that has ever come out of an Indian community for some reforms of Johnson-O'Malley and the consensus focuses around four key issues.

The first is the question of entitlement. By default, by negligence, by historical accident, Johnson-O'Malley has been treated as if it is a public school entitlement.

I think the greatest proof of that is Gallup-McKinley. Gallup lost its suit. The judge concluded his opinion by saying that in this district it is clear that Indians have not been given an even chance. The district was found guilty of misusing Johnson-O'Malley funds and yet their Johnson-O'Malley funds for next year increased.

Now this district, Central——

Mr. MEEDS. That alone wouldn't prove anything would it? Were there more programs for Indians?

Mr. JONES. Yes, there were.

Mr. MEEDS. Maybe it is better that Johnson-O'Malley funds were increased.

Mr. JONES. No, I think in practice it was better but there was no examination of whether or not the district ought to get funding. It was automatic.

Just as this district having the lowest tax rate in New Mexico plus a surplus of some $800,000 or $2.1 million, was not considered a relevant fact in whether or not they would get increased Johnson-O'Malley funding.

Now we argued away from the public school entitlement part of it and said: If this district has a surplus, why should they get funded next year? Let them spend their own money and use that Johnson-O'Malley money for districts that don't have a surplus. And that don't have the money.

Mr. Meeds. Let me play the devil's advocate though.

Mr. Jones. OK.

Mr. Meeds. It wasn't the San Juan School District that signed treaties with the Indians. They have the obligation in that school district to provide for education of the people within their district and, if they're not doing so, they certainly ought to be put on the pan for it.

But let us assume that they are spending approximately what other school districts in the State of New Mexico are spending. Is it then the responsibility of the people of those areas, or is it the Federal responsibility, to provide supplementary programs for Indians?

Mr. Jones. I think it is a Federal responsibility, to provide supplementary programs for Indians, but not to the school district itself, but to the parents. I think the entitlement should be switched in other words. It should not be a public school entitlement.

It should be an Indian entitlement, which is the main basis of the red regulations. And that says that the money should go directly to an incorporated parent's committee which then decides whether they want to spend the money in public school, whether they want it within the Indian community, whether they want to spend it in the mission school, the Bureau school or whatever.

Mr. Meeds. I think we both agree on that but how is that going to alter the situation you just described in the San Juan school district?

If Johnson-O'Malley funds are being channeled through an Indian school board, is the Federal Government to withhold funds from the Indian school board because San Juan County has a surplus?

Mr. Jones. From the school board? Yes. From the school district, Mr. Chairman, yes. I think that many of the problems that have come out have come out because Johnson-O'Malley has been looked at as a public entitlement——

Mr. Meeds. But who is going to be punished then? It is going to be the Indians.

Mr. Jones. No, an Indian committee can receive the money. They then decide whether or not they want to give it to the school board.

That is to say the committee could say to the School: We have an allocation of $600,000 of Johnson-O'Malley funds and we are not going to give it to you, to you the public school, until you spend your own money. We are going to use it ourselves for libraries and chapter houses and for after school programs.

Mr. Meeds. Use it outside of the general school system?

Mr. Jones. Right. And we expected to get a great deal of Indian support of the red regulations. I have in the appendix in either B or C, oh, no, I am sorry. It is appendix F. I have a letter from the State superintendent of schools in New Mexico in which he states at the bottom of the first page:

> I believe that Indians should establish eligibility and that services should be provided to Indian students from whomever can best do the job.
>
> When this is not the public school, the local Indian people should have the authority to deal with other educational agencies.

And I think this is very exciting news from a public school superintendent. And I find those of us involved in the red regulations have found it astonishing at this point to deal with the Bureau.

The Bureau insists on public school entitlement, in essence that the money should go only to public schools, but yet a public school superintendent is able to say that maybe we shouldn't get the money.

There are many instances, many districts in New Mexico where the problem is not a lack of money at all. The problem is simply a lack of will to do it or confused educational responsibilities.

Mr. Chairman, this morning someone from the Bureau of Indian Affairs mentioned an instance in which non-Indians can participate. I think the instance they mentioned demonstrates the problem of confused responsibilities and that was the instance of library books. The school, they said, has library books. Obviously they can't have them for Indians only or can't wire them so if a non-Indian touches them, he will get an electrical shock. That is true, but that is not really the problem.

The real question is why should the school buy books out of Johnson-O'Malley funds, if it is teaching anything about the United States?

Shouldn't it have Indian books in its library already?

You see what happens is that schools use Johnson-O'Malley to confuse the issue. That is to say, for many schools the philosophy is this: We will provide a Robert Hall straight off-the-rack education for you and if that doesn't fit you that is too bad. We will have to adjust your wrists or ankles or legs.

If our regular off-the-rack program doesn't work, let the Feds take care of it.

And so, you get a school like Central, which has 87 percent Indians, that purchases library books about Indians with Johnson-O'Malley funds. And if you say why didn't you do that in the regular school program, they say, Indian books aren't a part of the regular school Indian program.

Mr. Chairman, that is why Johnson-O'Malley has hurt rather than helped because it has confused responsibility.

Now I think the other question has been there are now some districts that have more compensatory funds per Indian child than basic funds. Albuquerque is one. There are kids taking three math courses a day and no English courses. And no one has noticed because the compensatory program teachers don't talk to the title I teachers and the title I teachers don't talk to the Johnson-O'Malley teachers and the Johnson-O'Malley lady doesn't know what the Indian education lady is doing and so on. The kids are therefore swamped with compensatory programs and have no regular program and are being offered six basic flavors of ice cream but no meat or no potatoes. That has been a real problem.

Let me throw in one more thing. I know it is customary to have studies done and then attack the study but I would like to change that precedent and attack the study before it even gets off the ground, and that is the BIA education program. This is the study requested by Congressman Hansen to see whether or not there was duplication between Johnson-O'Malley and title IV, part A, and I guess between other Office of Education funds, also. You know, the BIA and the Office of Education formed a committee to study this question.

Now I have here a copy of their Business Community Questionnaire. I got it at the Office of Education and I don't know whether or not I can get another one.

I would like to read from the first page of the Business Community Questionnaire. The first question asked the name of the State and then you have the second question. Now the third one asks: "Which of the following racial or national origin groups best described you?" And then you mark one, whether it be American Indian, Alaskan Native, and so on.

Another question asks your age right now.

Another question asks: "What is your sex?" And you mark one for male or female.

Another asks one: "What would most closely describe your profession?" And then it lists banker, rancher, farmer, clergyman.

Now the seventh question, Mr. Chairman, states: "What religious denomination do you belong to?" And then you mark one for Roman Catholic, Episcopalian, Methodist, Lutheran, Baptist" and so on.

Now I would contend that this questionnaire not only is guaranteed to offend someone within the Indian community but would probably offend anyone within any community since it is impossible to see what they have to do with determining overlapping use of Federal funds.

There is another much more serious problem with this study though and that is it is already being used as an excuse by the administration to not do what they had planned to not do anyway. And that is to say, in the administration's budget for this year, no money at all was requested on title IV, part A. This study is now being used as an excuse not to have asked for appropriations in the first place.

I think that perhaps appropriations will be asked for when the study is completed in September but——

Mr. MEEDS. Are you sure that the administration has not asked for something under title IV?

Mr. JONES. Part A.

Mr. MEEDS. Under part A?

Mr. JONES. Right. For the third year out of a possible three. But the study is now being used as the justification for that.

What is interesting, the study ignores the fact that title IV, part A, and Johnson-O'Malley serve different service populations. So that part of the study is absurd on the face of it.

I have another list of the school districts here and it shows they will visit Gallup, and other schools to see whether there is overlapping. They will visit Robeson County, which is listed as the second largest Indian district in the country, in North Carolina, and see if there is overlapping but there can't possibly be overlapping since there are no Johnson-O'Malley in Robeson County, N.C.

It also studies the Greater Anchorage area, where there are no Johnson-O'Malley funds.

It studies the city of Tulsa, in Oklahoma, where there are no Johnson-O'Malley funds and so there can't be overlapping.

So I guess that what I am saying is the simple fact that there are two pieces of legislation dealing with different service populations is simply ignored.

And even if in fact it could be proven there was some duplication, that would have no effect whatsoever on Robeson County, which gets no funding at all except through title IV, part A.

Now why the administration is using the study to pretend that they wondered whether or not there is Johnson-O'Malley duplication when there couldn't possibly be is beyond me. I don't understand it at all but I find it a very troublesome study because of that and because some decisions have already been made and the study is simply going to be used to justify those decisions.

Mr. MEEDS. Very well. Let's assume that Johnson-O'Malley funds are to be spent for Indian children and let's assume further that a substantial portion of them, are not presently being spent primarily for the children. Let's assume thirdly that we do not want to create any kind of a segregated school system by our utilization of funds. What kind of remedial action should be taken by this group to assure that those funds will not be so expended?

Mr. JONES. I think the legislative action that is needed is a major step of the red regs and that is to allow people to spend the money outside of the public schools. I think there are instances and I can cite some in which Johnson-O'Malley funds simply cannot be used properly within public schools. Let me give one example.

Cuba, N. Mex., is about half Navajo, about 40 percent Mexican and about 10 percent other. As an easterner, I avoid the use of the word "Anglo" because any word that makes no distinction between Pat Nixon and Golda Meier is a weak one. I use "other people."

In this district nearly everyone in the district is eligible for title I funds. The district politically is controlled by the Chicanos. Four of the five school board members are Chicano. The superintendent is a Chicano. The school principals are Chicanos and about 75 percent of the teachers are Chicanos. Now in order to believe that Johnson-O'Malley funds will be spent on only Indians in this district you would have to believe that the people responsible must give an advantage to a competing ethnic group over their own ethnic group and in terms of the power structure of the school the fact is they have done that.

Parental costs ostensibly are for Indian kids so they can get pencils and books and go to the assembly movie, which costs $1. And if you don't have $1, you can't go. They're mostly leftovers from the Bob Hope World War II troops movies. And I know one of the administrators, who is a Chicano, and I said to him: You have this for Navajo kids but what do you have for Chicano kids? And he said: Nothing. And I said: What do you mean, what happens when the assembly comes around? And he said: They just don't go. They have no money so they don't go.

So you have people representing one ethnic group pretending that they will let one class of kids, other than their own group, participate and they will not let their own kids participate because of lack of money.

So the real issue seems to me in a school district like this is that the school ought to be free for everybody and there ought to be parental costs for everybody, because what the school actually does then is not supply parental costs for the Navajo kids only. So instead of discriminating against their own kids they discriminate against everybody.

I think there where you have competing groups as you now have in more and more funding all you really do is supplant other supplementary money. In other words, as you move more Indians into Johnson-O'Malley programs, you move them out of title I programs so the title I programs become non-Indian programs. It is illegal. There are some school districts though where it is completely unavoidable.

That is why I think the great strength of Johnson-O'Malley is that public schools are never mentioned. If the regulations would allow it, it would not be illegal for you to allow the parents to control it themselves. The parents would then have control of their own parental costs and they could take care of it.

They could do what the school could not politically do within its own system. And I think there are a number of cases like that.

Mr. Meeds. Do you think this bill is strong enough or precise enough in the allowing and requiring Indian school boards to control the expenditure of Johnson-O'Malley funds in local school districts?

Mr. Jones. I don't think it is now.

Mr. Meeds. How should it be improved?

Mr. Jones. I think it should have specific language that says it will be an Indian entitlement on a formula basis, that is either the State or national is higher, and that the funds will be contracted.

The first preference for the funds will be to local Indian education groups so that they then have the option.

Mr. Meeds. Well, what is the formula for distribution of Johnson-O'Malley funds presently or is there one?

Mr. Jones. No; there is none whatsoever.

Mr. Meeds. There are some regulations however on it, are there not?

Mr. Jones. No, sir. It is ostensibly based on need. In Arizona one school has $2 a kid and another school has $1,600 a kid. We said to the Bureau why is their need 600 times greater than the other kids' need? They could not explain it.

Mr. Meeds. Well, even assuming that we adopt the language of this proposal and that we devise some kind of formula for distribution of funds, how are we going to make this work as far as the urban Indian children under the provisions of this bill?

Mr. Jones. I will tell you frankly that we in the red regs group ducked the question and we ducked it this way——

Mr. Meeds. I noticed that.

Mr. Jones. Yes. Everyone noticed it. We weren't very clever about ducking our ducking.

We said that the Bureau will service its service population of Johnson-O'Malley and we did it on the theory that the tail sometimes wags the dog but this particular tail wasn't going to and we were not through Johnson-O'Malley going to decide who the Bureau service population would be. That would be decided through lawsuits and court decisions.

But one of the reasons we wanted to duck it was that we did not want a situation where there would be an immediate conflict between federally recognized tribes and all other groups on whether or not there would be a change in Johnson-O'Malley. We wanted to avoid that fight.

Mr. MEEDS. In a school district which had a 60 percent Indian school population, would you think it would be improper use of Johnson-O'Malley funds to have an Indian cultural curriculum?

Mr. JONES. Congressman, I am the wrong one to ask about that. It is my deep conviction that most public schools are not capable of teaching the culture of anybody at all. My daughter is now nine. She has been studying about Japan for 3 years and all she knows is that they are short and eat rice. It is one thing to mangle the culture of people 5,000 miles away. But I don't think I would like to see them take on Indian culture.

Mr. MEEDS. Well, you would agree with me, would you not, that it would be pretty difficult to send her to Japan for a while to study the culture, right?

Mr. JONES. Right. But I think she could get textbooks written by the Japanese.

Mr. MEEDS. Well given the economics of scale and the inability to always be perfect in each case or as perfect as you would like, I don't think you would say that it is better not to teach at all about culture, would you?

Mr. JONES. Yes, I would say that.

Mr. MEEDS. You would?

Mr. JONES. Yes.

Mr. MEEDS. So that we shouldn't be studying in our school the culture of Japan, France, or South Vietnam?

Mr. JONES. I would say that given the way that it is taught in most cases, "No." I used to teach social studies and I once spent the better part of 3 months looking for textbooks. And I would say that it would be better not to teach at all than to teach from these books.

Mr. MEEDS. Don't you think we would be very narrow people if we followed your advice?

Mr. JONES. No, less so. I think at least we would be aware of our ignorance, which would be an opening step. We would at least say in fact that we don't know anything about these people.

Mr. MEEDS. What you are saying to me, sir, is that if you can't achieve perfection you don't try anything and I am not quite prepared to buy that. I think probably you would agree—given our system and our demands on the dollars for education, transportation, government, and all other things—we certainly ought to make some effort to give our children some kind of partial understanding of other peoples. In my view, to simply say that because we can't do it absolutely and perfectly we ought not to do anything, evades and avoids our responsibility to understand our fellow man. I guess you just disagree with that?

Mr. JONES. I do. I think it is a legitimate disagreement and I know that I certainly wouldn't be interested in any regulations that would interfere with any Indian community having cultural programs in the school if that is what they wanted. I am just speaking for myself.

Mr. Meeds. Well let's assume, just for the purpose of this question, that it is all right to teach culture in schools. Is it a proper expenditure of Johnson-O'Malley funds to teach Indian culture in a school community that is composed of 60 percent Indian children and 40 percent non-Indian children?

Mr. Jones. No, I don't think it is. I think it should be done out of basic educational funds. That is, I have been accused of favoring segregated programs, which I don't at all. I think that integrated programs should be supported with integrated money and not with Indian money.

Mr. Meeds. Yet if there is not a good understanding by Indians and non-Indians alike of the values, traditions, and so on of Indian culture, it becomes much more difficult to obtain funds in the future, which might deal with some of these problems. Do you not agree?

How can we understand other cultures if we have not at least had an opportunity to be subjected to some kind of cultural education?

Mr. Jones. Well, that is what worries me.

Mr. Meeds. What I am saying really is I think your attitude in fact can be self-defeating. Now I may be wrong. I would like you to respond to it.

Mr. Jones. Yes, sir. I would like to respond to it. I would be for greater funding but I just think there is a limit to what public schools can do with the funds because partially there is such a gap generally between an Indian community and the school community.

To each one they are "those other guys." Most Indian parents are not very clear about what happens in school or why or how. They either accept it or don't accept it or are indifferent but they are not involved. They have become involved to a great extent through Johnson-O'Malley committees though, but when they do become involved, it can also be very frustrating because the power of the committee can build up and build up and build up and when push comes to shove they don't have as much power as the school board.

So I approve of giving Johnson-O'Malley committees absolute sign-off, but I think you can have a situation where you have a deadlock. The school wants something and the committee won't buy it and the school says if you don't buy it you won't have it.

Then I think you have a negative deadlock. I think the only real substitute for that would be Federal funding that doesn't go to the schools but goes directly to the parents where they can reward achievement and also be held responsible for the system.

So you can say to the parents, well, how are the Johnson-O'Malley programs at your school? And they can say, oh, they are lousy and they didn't at all do what we wanted them to do. And then we can say, OK, that is up to you now. Don't give them the money next year.

And, you know, maybe the people would like to start their own schools. Maybe because we are talking about money being available on an entitlement basis for Indian children from birth through the completion of high school, maybe in fact it would make a lot more difference if they could have programs for 2-year-olds rather than just use the public schools.

But I think that it really can be changed, Mr. Chairman, only if the parents have some sort of reward and punishment device—well, maybe that is a little strongly put, but some sort of reward or withheld reward in relation to the schools, perhaps a small token system.

Mr. Meeds. You appear to be involved in continuing discussion and study of this whole area of Johnson-O'Malley. I wasn't a part of the [illegible] of those hearings on the Kennedy bill, so I am not as much of an expert as you. But I do know that when we had our hearings back then [illegible] was focusing on the establishment of local Johnson-O'Malley advisory committees.

My observation at that time, for whatever it is worth, was that these committees were largely paper organizations. I don't mean to criticize the whole thing, but in many instances they were "establishment" Indians on the advisory committees. The local school board superintendent sat down and decided the district was going to use the money about the same way it had used it for the past 20 to 30 years. Then the advisory committee kind of rubber stamped the whole operation.

First question, is that a view which you might share with me about their performance and secondly has that changed much?

Mr. [illegible]. I agree with your assessment of how it was. I do think it has changed. I think that is still true in some places that there are still committees that have no clear authority and there are still places where there are no committees.

But I do see that the committees in some cases have gotten far stronger, since that is the major part of my work, that is, training [illegible] to say that. But I also see that whereas the Johnson-O'Malley [illegible] is a great opening into school involvement it is a [illegible] some of the better committees get stuck on Johnson-O'Malley alone and in dealing with perhaps 2 percent of the [illegible] school system and the other 98 percent go unnoticed [illegible] being put on a step.

[illegible] some school systems have turned it over to the Indians and [illegible] of Johnson saying, well, we will run our schools and [illegible] Johnson-O'Malley. So you get really strong committees [illegible] for things like Indian library books out of Johnson-O'Malley. And I say it shouldn't be from Johnson-O'Malley. That is the [illegible]. And many strong committees have actually accepted the idea that this should go on and produce that general, dull gray, "Robert Hall" type education and that the only hope is going to be through Federal money.

[illegible] that has created a problem in itself.

Another problem with some of the committees has been that they [illegible] of tribal politics and in some parts of the country [illegible] that they are all men on the committees. My own experience [illegible] that women generally are the ones who know what is [illegible] in the schools and maybe everywhere but in the [illegible] schools particularly—and the men deal on a political level with the school superintendent once or twice a year but the real nitty-gritty day-to-day action could much better be handled by women.

Mr. Meeds. Well, it may have changed. I hope it has, but again my observation was that few of the advisory committee members to [illegible] had a very great understanding of the total school budget and the relationship of Johnson-O'Malley funding to that budget and indeed even the basic concepts of what Johnson-O'Malley funding was all about initially. Has that been changed substantially?

Mr. Jones. It would really help me if I could say it has changed substantially, but in truth it hasn't. We have done some very complicated training building up to this budget form, to this New Mexico budget form and we have gone over the entire budget form. We have stopped just short of giving questions on it. We have gone out of our way to try to train people on Johnson-O'Malley in its full context, but it is very difficult. I think that there are some people, sometimes not more than one or two people in any given district who really like detailed budget stuff but most people are just turned off by it. And part of our training program has been to hold mock budget hearings and to have people go to the full budget hearings. Of course one of the problems with Johnson-O'Malley has always been that even though it is supplementary it is planned 1½ years before the school budget is. Now how can you plan a supplement before you plan what it is supplementing? The answer is you can't. So the Bureau says it needs 2 years because that is their planning schedule but the schools by definition [illegible] month fiscal planning schedule and that is when the real action takes place. That meeting 2 years beforehand is a farce.

The Bureau, Mr. Chairman, really doesn't care. I mean, it starts out as a program but by the time it gets to Washington there is nothing there [illegible]. I mean they don't care whether you have library books or offices or what. They are just dealing with a total dollar figure for the area office. You could get no money for one district and [illegible] a kid to another district and it is no skin off the Bureau's nose.

Mr. Meeds. Mr. [illegible], who testified just before lunch, suggested that we ought to have a national advisory committee and even State advisory committees on Johnson-O'Malley. Do you think that might help eliminate some of the problems, or at least provide a safeguard against lack of more precise knowledge by establishing statewide or national goals?

Mr. Jones. I think a national advisory board would help if it was chosen on a functional working basis rather than a political basis and of course the Bureau didn't name its own employees to the board. The last time the Bureau had a national education advisory board I represented the Albuquerque area and worked in the Albuquerque area office as a tribal operations officer there. So it wasn't really very advisory. It wasn't even Mickey Mouse with real ears; it was just a musketeer-hat Mickey Mouse.

You see the problem is the Bureau does not administer the funds in any sense. The Bureau's only job is the gate through which the money passes. They don't know what is going on with Johnson-O'Malley and don't know things they're supposed to know.

I was just reflecting this morning the Bureau doesn't even know who the service population is. You ask whether or not Johnson-O'Malley serves nonreservation Indians and the answer is, Mr. Chairman, of course it does. There are no reservations in Oklahoma and Johnson-O'Malley has been going into that area all the time.

I think the Bureau sees its job as meeting once a year to sign the contract.

Mr. Meeds. It is my understanding that present Johnson O'Malley requests are somewhere in the area of $2.6 billion and also my understanding in your statement that you disapprove a request for $65 million for title I under Johnson O'Malley.

Mr. Jones. I just wondered why there is a ceiling on it.

Mr. Meeds. Pardon?

Mr. Jones. I just wondered why there is a ceiling on it.

Mr. Meeds. In effect if appropriations are presently available, they could be $2 billion or $3 billion, but they list the eligibility at $65 million.

Mr. Jones. Correct.

Mr. Meeds. Go ahead.

Mr. Jones. I don't know the workings of authorization at all. Maybe there is some purpose in putting it on. I just didn't understand it because I thought there was no limit now.

Mr. Meeds. First, do you propose that we get around the present restrictive practice of making Johnson O'Malley funds available only to Indian children "on or near reservations"? If you propose that, how do we do it?

Mr. Jones. I would propose what is proposed in the red regulations and that is that it go to the Bureau service population.

I would hope the Bureau service population would increase.

Mr. Meeds. How does the Bureau increase its service population in the red regulations?

Mr. Jones. Oh, they do it by saying there is an entitlement for all Indian students from birth through graduation from high school.

There are now some Indian students applicable for Johnson O'Malley under all of the items in the regulations but who don't receive any funds because of peculiarities in the State plan. Arizona is the best example of that. We have close to 2,500 Indians who live on reservations who receive no Johnson O'Malley funds because the district tax I think is below average.

So in that respect it would be increased. I am told that the Supreme Court will probably consider the question of who is eligible for Bureau services also.

Mr. Meeds. How would you respond to a distinction or a definition in the bill which described "Indian" as those of one-quarter blood or more or who were considered by the community in which they resided to be Indians. This then would be the BIA's service population.

Mr. Jones. I personally wouldn't have any problem with that. I see that question as related to the question of formula.

By the way, formula in the entitlement, well, for example, when we were discussing regulations with some people from the Alaska Federation of Natives, they were concerned about the eligibility of Anchorage under proposed regulations because they thought that if small rural areas in Alaska had to compete with the relative city dwellers from Anchorage for Federal funding, that the rural people would lose out. And I think that if there is competition for funds as in fact there has been under Johnson-O'Malley that there is unlegitimate concern about urban participation.

I don't think anyone is concerned if the money is going to be available for everybody. If a formula grant is possible, I don't think there is any concern.

Mr. MEEDS. OK, well, thank you very much. We appreciate your testimony.

[The full statement of Myron Jones, together with the attachments thereto, follow:]

STATEMENT OF MYRON JONES, DIRECTOR, INDIAN EDUCATION TRAINING, INC., ALBUQUERQUE, N. MEX.

I. INTRODUCTION

My name is Myron Jones. I'm a Tuscarora Indian and the Director of Indian Education Training, Inc., located in Albuquerque, New Mexico. I thank you for the invitation to testify before this Subcommittee. I would like to focus all my testimony on those issues raised by this legislation (S. 1017) that would effect the Johnson-O'Malley Act, i.e. Title II, Part A.

Two years and four months ago, I was invited by Congressman Meeds to testify before an education subcommittee that met in Gallup, New Mexico to collect field testimony on several pending pieces of Indian legislation. Then, as now, I represent an organization that both trains Indian education committees and monitors Federal programs and funds. Our organization has been at this for the past four years, and though that represents a relatively short span in the total history of Indian education, it has been long enough to enable us to identify some clear points of progress and some clear instances of remarkable intransigence.

In June of 1972, the State of New Mexico adopted a new Johnson-O'Malley plan which clearly stated that all programs had to be supplementary. It also gave more authority to district Johnson-O'Malley committees and introduced a new budget form (Exhibit A) which helped considerably in relating the use of supplementary funds to a school's overall program planning. Eleven of New Mexico's Jonnson-O'Malley school districts now receive their funds, not through the State, but through inter-tribal and tribal groups. The remaining seven school districts (all Navajo) are now involved in negotiations for a Navajo tribal contract for next year.

Nevada, Oklahoma, California, Alaska and Wisconsin have also revised their State Plans. In all cases, but to varying degrees, these States provided protection against supplanting. Two and a half years ago, only North Dakota, South Dakota and Nebraska had tribal or inter-tribal contracts. Michigan, Minnesota, New Mexico and Alaska have now joined this list. The Natonabah lawsuit in New Mexico was decided in favor of the Indian plaintiffs and a similar lawsuit (Denetclarence) was settled in terms highly favorable to the Indian plaintiffs.

That's a summary of the good news. The bad news is that all these reforms were accomplished without any changes or constructive guidance in the form of Bureau of Indian Affairs policy.

Two and a half years ago, there was a national movement to change B.I.A. Johnson-O'Malley regulations and 28 months and 14 drafts later, there still has been no change in Johnson-O'Malley regulations. The system and rationale for distribution of the funds remains as mysterious as ever.

Because all reform has been initiated at a local or State level, those States (most notably Arizona) that have been both stubborn and arrogant have not only been able to use all their funds for basic support but have received steady increases in their total dollar amounts. The Phoenix Area Office this year recommended that their budget be increased from $4 million to $10 million. That was shortly after the State Department returned the Bureau's program evaluation form with the simple explanation that the form was inappropriate because they ran no programs (Exhibit B).

I'll return to the question of reform and regulations after a specific analysis of the proposed legislation.

II. ANALYSIS OF TITLE II, PART A, AS PASSED BY THE SENATE

Section 202 (1).—Admirable language, particularly because it lays the groundwork for an Indian entitlement rather than a public school entitlement.

Section 202 (5).—Exempts school boards that have a majority of Indians on the school board. This provision is clearly appropriate for well-defined Indian communities with one or two schools. It is not appropriate for very large districts such as Gallup or Central #22 in New Mexico. Both have a majority (3 out of 5) Indian school board membership, and they have approximately 8,000 and 3,000 Indian students respectively. It is a mistake to assume that the school board members can successfully oversee the use of Johnson-O'Malley funds in every school in their district. The Gallup-McKinley school district takes up an area the size of Connecticut. This section would eliminate existing JOM committees in both districts and that would mean that 11,000 of the 17,000 JOM students in the State would have no local representation. The other problem is that this section contradicts the previous one by assuming a school district rather than an Indian entitlement.

Section 202 (6).—This section deals with the bordertown peripheral dormitory program. No part of Johnson-O'Malley better illustrates an absence of Bureau policy than this program. Although the money comes through Johnson-O'Malley, bordertown programs have always operated independently of any State plans or committees. Until two years ago, the State of New Mexico provided State funding for bordertown students even when the students were citizens of Arizona and Utah. Now they pay State funds only for New Mexico residents. Nevertheless, New Mexico bordertown students have no Johnson-O'Malley committees, operate outside the terms of the State Plans, and the JOM contract comes directly from the Area Office to the school district. Arizona and Utah pay no State education money for bordertown students regardless of their residency. The Bureau is expected to provide full tuition payments for all students, even if they are going to school in their home district. How these States can justify going against their own constitutions and school statutes and ignore payments for State residents is a question that has been asked by several interested parties, including the General Accounting Office. This new section, if administered correctly, should take care of the question of State responsibility. There remains a need, though, for having bordertown funds also covered by JOM committees. Although tuition payments are legitimate for out-of-State students, there is no reason why bordertown funds like all other funds should not be handled under the terms of a plan and available for tribal or inter-tribal contracting.

Section 202 (7).—It's not clear why an authorization for funding is listed here. There is presently no ceiling on Johnson-O'Malley authorization.

Section 203.—This section calls for a committee to study JOM as it now operates and JOM as it relates to other Federal programs, specifically P.L. 874, P.L. 815, ESEA, and the Indian Education Act of 1972. It also asks for this committee to make legislative and policy recommendation both for Indian students in public schools and for Indian-controlled community colleges. Study committees seem to fall into four broad categories. Listed in descending order of value, they are: (1) committees to prepare study and documentation that will lead to necessary change; (2) committees that have no purpose other than to make a study for its own sake; (3) a committee formed to delay all questions of possible change; and (4) committees that will prepare artificial evidence either to justify an indefensible status quo or an already planned regressive move.

Last year, the House Interior Appropriations Committee asked for a joint BIA/OE study in relation to Title IV, Part A of the Indian Education Act, other OE funding and Johnson-O'Malley. This is to be completed by September, 1974. The existence of this study is now being used to justify the Administration's failure to ask for an appropriation under Title IV, Part A. In effect, the study is being acted on in a negative way, even though it hasn't been completed!

There is no question that Johnson-O'Malley should be looked at in the context of other Federal funding, but to a large degree this has already been done. I would like to submit a copy of what has come to be known as the "Red Regs." These have been put together by more than 50 Indian organizations and tribes and they represent, through the combined efforts of all supporters, years of observation and study of Johnson-O'Malley.

BEST COPY AVAILABLE

I have not been authorized by any organizations or tribes to make definite legislative recommendations. I would like to present three fundamental principles incorporated into these regulations:

(1) Indian entitlement.—It is recommended that since there are presently several Federal laws that represent public school entitlements (Public Law 874, Public Law 815, ESEA Title I, which applies to the overwhelming majority of Indian students, and Title IV, Part A), Johnson-O'Malley should be defined and administered as an Indian entitlement for all Federal Indians from birth through the completion of high school. Funding should be based on a per capita formula that would reflect either the State or national education costs, whichever is higher. Local school committees should all be eligible for contracts and they should be allowed to spend their entitlement wherever they wish: public schools, BIA schools, mission schools, independent contract schools, pre-school programs, Headstart, Homestart, etc. Only when there is a local option as to where the money will go will there be any kind of real Indian control and responsibility. An Indian entitlement formula would eliminate another serious Johnson-O'Malley problem: a random and inexplicable distribution of funds. Recent research by our organization has shown national funding ranging from $1,065 in Alaska to $74 in Nevada (Exhibit C). Within the States, it is equally ridiculous. Arizona has distributions ranging from $708.64 per student to $44.44 per student (Exhibit D). In addition, there are thousands of students, 5,258 in Arizona alone, which receive no Johnson-O'Malley funding (E). This is not because the students have no needs, but because their districts will not raise taxes to meet the State-wide average. (NOTE: Although this is a condition of funding in Arizona, districts in neighboring New Mexico can and do have the lowest tax levies in the State and still receive Johnson-O'Malley funding.)

(2) The "Red Regulations" deal with another question that should be a part of any new legislation. They provide a real monitoring force: the clearly-stated Indian right to spend the money where it seems most beneficial to do so. Those educational institutions that produce will receive continued and maybe additional funding.

Those educational institutions that do not produce can be turned off. It is very frustrating to Indian parents and education committee members, particularly those who are most active to discover again and again that although they believe they have finally accumulated some power on their committee, they still rank second to all public school boards when push comes to shove. Many Bureau officials would try to reassure us on this point by saying, "Maybe push should never come to shove." Maybe it shouldn't. And maybe there shouldn't be hurricanes and tidal waves. The fact is there will be conflicts of interest. And they needn't be detrimental to a public school; they can be a positive force for change. I don't see why negotiation and conflict cannot be a legimate part of a school's educational process.

It is a great irony that the Bureau of Indian Affairs frequently claims entitlement right to maintain a public school sanctity that many public school officials no longer try to justify. Appendix F contains a letter from the New Mexico State Superintendent of Schools who agrees with us on two crucial points: (a) Public schools should receive Johnson-O'Malley funds only if they deliver; (b) Public schools are one educational source; they are not the only source, nor should they be.

When Johnson-O'Malley is talked about, the Bureau believes only in public schools as legitimate places of learning. Clearly they don't really believe that. If they did, they would be busy dismantling the Bureau's own educational system rather than expanding it.

(3) There is another major reform issue which is handled by the "Red Regs" that should be a part of legislative reform, and that is the language that protects against supplanting. Over the years, the general BIA position has been, "Whether or not funds should be supplementary in a predominately non-Indian school district, clearly it shouldn't be an issue when there is an overwhelmingly Indian school with an Indian-controlled board." This position sometimes works very well with Indian-controlled boards. The question is posed that this way: "Would you rather use the money for supplementary purposes only, or would

you rather use it as you wish without any restrictions?" They invariably answer that they would prefer to have no limitations. This is misleading, though, because the whole issue of supplanting has been successfully bypassed. A crucial question must always be: To what extent are Johnson-O'Malley funds being used to do what has to be done without Johnson-O'Malley?

In the Natonabah case in New Mexico, it was ruled that schools not only had to meet minimum standards, they had to provide assurance of comparability between Indian and non-Indian students *before* any JOM funds could be used. That question always has to be looked at. To what extent are State funds being supplanted? Local funds? Other Federal funds? Two years ago the State Department of Education in Arizona held a press conference announcing that it would have to close 15 public school districts unless it received an additional $1.1 million in Johnson-O'Malley funds. (Appendix G). Apart from the fact that the article is insulting to the intelligence of anyone who knows about Indian status on taxes and Public Law 874, it presents an absurd situation. Try to imagine the same State's Department threatening to close say 15 suburban school districts unless it received a relatively scanty $1.5 million. What is also interesting in terms of Federal funds supplanting Federal funds is that while holding this press conference the State of Arizona was using the simplest and least rewarding possible formula for Public Law 874 funds. They still use the easiest and least advantageous formula—average of all elementary schools in the State—average of all high schools in the State.

Those questions all have to be considered in new Johnson-O'Malley regulations and in any new legislation. Those of us who have been working on the new regulations will continue to push as hard as we can for these essential administrative changes. And we will push above all for the two most basic points: Indian entitlement—Indian fiscal and administrative control.

Thank you.

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STATE OF NEW MEXICO

Page A

Fiscal Year 197[illegible]

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D.P. CODE NO. ____

PUBLIC SCHOOL BUDGET

ESTIMATE WORKSHEET

$ 117,456,798

= $ ____

= $ ____

= $ 117,456,798

.00222

Production at 100% Collection = $ 261,311

X Estimated Percent of Collection 99.5 % = 10.11 $ 260,031

10.12 $ 3,000

10.13 Arizona $ 850 Per Pupil 10.13 $ 46,750

10.14 $ 35,000

10.17 $ ____

10.18 $ 800

10.19 School Bus Fleet 10.19 $ 168,677

10.20 $ 3,001

TOTAL LOCAL SOURCES $ 537,262

$ 250,688,062

$ ____

$ ____

$ ____

$ ____

$ ____

TOTAL VALUATION = $ 250,688,062

X Tax Rate .0067

Production of 100% Collection = $ 1,679,610

X Estimated Percent of Collection 99.5 %

20.01 General County School Tax = $ 1,671,212

X Estimated 40 Day ADM % 31.28 % = 20.01 $ 522,755

20.02 Motor Vehicle License Fees 20.02 $ 23,745

TOTAL COUNTY SOURCES $ 546,500

ESTIMATED 40 DAY ADM:

Regular [illegible]

Non Profit ____

Sub Total 4950

Special Ed. ____

Total 4975

3. State Sources

30.1.1 $ 2,314,827

30.1.2 $ 36,881

30.3.1 $ ____

30.3.2 Out-of-State Tuition (To State of: ____) 30.3.2 $ ____

Est. No. of Pupils ____ Est. per Pupil $ ____

30.3.4 $ ____

30.3.5 Program Enrichment ____ $ ____

____ $ ____ 30.3.5 $ ____

30.40 Transportation Distribution - Regular 30.40 $ 31,268

30.41 Transportation Distribution - Special Ed. 30.41 $ 7,000

30.50 Other Special State Revenue ____ $ ____

State Vocational ____ $ ____

____ $ ____ 30.50 $ ____

TOTAL STATE SOURCES $ 2,389,976

4. Federal Sources

40.02 $ 1,601,426

40.03 $ ____

40.05 Regular Vocational Programs (Complete Form #35) 40.05 $ 7,000

40.06 Other Vocational Special Projects (Identify)

____ $ ____

____ $ ____

40.06 $ ____

40.09 Johnson O'Malley 40.09 $ 407,444

40.11 Forest Reserve Income 40.11 $ ____

40.12 Other Special Federal Revenue (Identify)

____ $ ____

____ $ ____

____ $ ____ 40.12 $ ____

TOTAL FEDERAL SOURCES $ 2,015,870

COUNTY San Juan SCHOOL DISTRICT Central Consolidated NO. 22

1??.24

135.81

827.6?

137.13

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STATE OF NEW MEXICO PUBLIC SCHOOL BUDGET REVENUE ESTIMATE WORK SHEET 1973-74 Page 8

	ESTIMATED (By School District)	FINAL [illegible]
5. Non-Revenue Sources: [illegible]		
From ______ Purpose ______ $ ______		
From ______ Purpose ______ $ ______		
From ______ Purpose ______ $ ______		
40.99	$	$
[illegible]	$	$
[illegible]	$	$
TOTAL NON-REVENUE SOURCES	$	$
SUB-TOTAL OPERATIONAL FUND ESTIMATED REVENUE AVAILABLE	$ 5,489,608	$
6. Anticipated Cash Balance as of June 30 (include fund investments not exchanged for cash) [illegible] sub paragraphs B & C	$ 1,[illegible]	$
7. State Instructional Materials Credits 30.00	$ 43,084	$
9. TOTAL OPERATIONAL FUND ESTIMATED RESOURCES AVAILABLE	$ 6,936,663	$
DEBT SERVICE INTEREST FUND:		
1. 10.21 Debt Service Interest Tax Rate ______ (To Be Completed by P.S.F.)	$ 19,000	$
2. 10.14 Earnings from Investments	$	$
3. Anticipated Cash Balance as of June 30 (include fund investments not exchanged for cash)	$	$
9. TOTAL DEBT SERVICE INTEREST FUND ESTIMATED RESOURCES AVAILABLE	$ 19,000	$
DEBT SERVICE PRINCIPAL FUND:		
1. 10.22 Debt Service Principal Tax Rate ______ (To Be Completed by P.S.F.)	$ 70,000	$
2. 10.14 Earnings from Investments	$	$
3. Anticipated Cash Balance as of June 30 (include fund investments not exchanged for cash)	$	$
9. TOTAL DEBT SERVICE PRINCIPAL FUND ESTIMATED RESOURCES AVAILABLE	$ 70,000	$
GENERAL BUILDING FUND:		
1. 50.1 Sale of Bonds	$	$
2. 10.14 Earnings from Investments	$	$
3. Other (Identify) ______	$	$
4. Anticipated Cash Balance as of June 30 (include fund investments not exchanged for cash)	$ 185	$
9. TOTAL GENERAL BUILDING FUND ESTIMATED RESOURCES AVAILABLE	$ 185	$
FEDERAL PROJECTS FUND: Identify Source of Revenue		
1. P.L. 89-10 Title I	$	$
2. P.L. 89-10 Title I Migrant	$	$
3.	$	$
4.	$	$
5.	$	$
6.	$	$
7.	$	$
8.	$	$
9. TOTAL FEDERAL PROJECTS FUND ESTIMATED RESOURCES AVAILABLE	$	$
OTHER FUND: (Identify) Teachers Quarters Receipt Code No. ______	$ 72,060	$
1. 10.14 Earnings from Investments	$ 625	$
2. Anticipated Cash Balance as of June 30 (include fund investments not exchanged for cash)	$ 114,252	$
9. TOTAL Teachers Quarters FUND ESTIMATED RESOURCES AVAILABLE	$ 186,937	$
OTHER FUND: (Identify) ______ Receipt Code No. ______	$	$
1. 10.14 Earnings from Investments	$	$
2. Anticipated Cash Balance as of June 30 (include fund investments not exchanged for cash)	$	$
9. TOTAL ______ FUND ESTIMATED RESOURCES AVAILABLE	$	$
OTHER FUND: (Identify) ______ Receipt Code No. ______	$	$
1. 10.14 Earnings from Investments	$	$
2. Anticipated Cash Balance as of June 30 (include fund investments not exchanged for cash)	$	$
9. TOTAL ______ FUND ESTIMATED RESOURCES AVAILABLE	$	$
GRAND TOTAL ESTIMATED RESOURCES AVAILABLE	$ 7,232,785	$

San Juan Central Consolidated 22

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Submit in Duplicate To:

Chief, Public School Finance Division
Department of Finance and Administration
State Capitol Building
Santa Fe, New Mexico 87501

STATE OF NEW MEXICO

SCHOOL DISTRICT Central Consolidated NO. ____

COUNTY San Juan

FOR DATA PROCESSING ONLY
DP Code No. ____

PUBLIC SCHOOL BUDGET

1973-1974

		1	2	3	4	5	6	7	8	9	10
EXPENDITURE CLASSIFICATIONS		ESTIMATED EXPENDITURES Johnson O'Malley 1972-73	Regular (Units 2 & 01) 1972-73	No. of Pers (Units of Tenths)	Approved Tentative Total Budget 1973-74	No. of Pers (Units of Tenths)	PROPOSED BUDGET Johnson O'Malley 1973-74	Regular (Units 2 & 01) 1973-74	No. of Pers (Units of Tenths)	Approved at Hearing	Final Approved Budget
100 ADMINISTRATION 110 Personnel for Administration											
[illegible]	110.01		20,675	1.0				21,800	1.0		
[illegible]	110.02		35,295	2.0				37,[illegible]	2.0		
[illegible]	110.31	12,617	12,617	1.0			14,770	14,[illegible]	1.0		
[illegible]	110.41		9,505	1.0				10,677	1.0		
[illegible]	110.42	8,489	29,777	6.0			4,440	40,898	7.0		
120 Services for Administration											
[illegible]	120.01	5,500	6,000					1,100			
[illegible]	120.02		3,000				1,200	6,000			
[illegible]	120.03										
[illegible]	120.04		2,200					2,200			
[illegible]	120.05		648								
[illegible]	120.06		100					200			
[illegible]	120.07										
[illegible]	120.08										
130 Other Administrative Expense											
Board of Education Expense	130.01		2,000					4,500			
Administrative Travel	130.02	800	2,500				500	4,500			
Office Expense	130.03		7,000				500	7,500			
100 SERIES SUB TOTAL		27,406	132,317	11.0			21,410	150,731	12.0		

0100

SCHOOL DISTRICT [illegible] NO. [illegible]

COUNTY [illegible]

EXPENDITURE CLASSIFICATIONS	1	2	3	4	5	6	7	8	9	10
[illegible]		[illegible]	[illegible]				[illegible]	[illegible]		
[illegible]		[illegible]	[illegible]			[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]	[illegible]			[illegible]	[illegible]	[illegible]		
[illegible]		[illegible]	[illegible]				[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]	[illegible]			[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]	[illegible]			[illegible]	[illegible]	[illegible]		
[illegible]		[illegible]				[illegible]	[illegible]			
[illegible]	[illegible]	[illegible]	[illegible]			[illegible]	[illegible]	27.0		
[illegible]		[illegible]					[illegible]			
[illegible]		[illegible]					[illegible]			
[illegible]	[illegible]	[illegible]				9,110	[illegible]			
[illegible]		[illegible]					[illegible]			
[illegible]		[illegible]					[illegible]			
[illegible]		[illegible]								
[illegible]	22,000	[illegible]				22,000	[illegible]			
[illegible]		500				[illegible]	[illegible]			
[illegible]		[illegible]					[illegible]			
[illegible]		[illegible]					[illegible]			
[illegible]		[illegible]				[illegible]	[illegible]			
[illegible]	150	[illegible]				[illegible]	[illegible]			
[illegible]		[illegible]					[illegible]			
[illegible]		[illegible]	7.0				[illegible]	3.0		
[illegible]		[illegible]	2.0				[illegible]	3.0		
[illegible]		[illegible]					[illegible]			
[illegible]							[illegible]			
[illegible]		[illegible]					[illegible]			
[illegible]		[illegible]					[illegible]			
[illegible]							[illegible]			
[illegible] SUB TOTAL	73,520	2,666,552	252.5			188,142	[illegible]	308.0		

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SCHOOL DISTRICT Central Consolidated NO. 22

COUNTY

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Page 3

[illegible]

SUBSERIES SUBTOTAL

SCHOOL DISTRICT Central Consolidated NO. 22

COUNTY San Juan

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	1	2	3	4	5	6	7	8	9	10
[illegible]										
[illegible]										
[illegible]		108,406	30.0				[illegible]	35.0		
[illegible]		60,000					60,000			
[illegible]		19,500					[illegible]			
[illegible]		63,000					[illegible]			
[illegible]		79,057					[illegible]			
[illegible]										
[illegible]		12,625					39,4[illegible]			
[illegible] SUB TOTAL		349,195	30.0				[illegible]	35.0		
700 MAINTENANCE OF PLANT										
710 Salaries, Maintenance of Plant										
[illegible]		10,852	1.0				11,0[illegible]	1.0		
[illegible]		51,922	5.0				[illegible]	7.0		
720 Other Maintenance of Plant Exp.										
[illegible]		120,000					150,000			
[illegible]		11,500					[illegible]			
[illegible] SUB TOTAL		[illegible]	6.0				[illegible]	8.0		
800 FIXED CHARGES										
810 Employee Benefits										
[illegible]	4,647	178,477				14,097	[illegible]			
[illegible]	4,054	137,213				12,695	[illegible]			
[illegible]	695	18,089				2,270	[illegible]			
820 Insurance										
[illegible]		32,000					32,000			
[illegible]		500					750			
[illegible]										
[illegible]		10,956					14,000			
[illegible]										
[illegible]										
[illegible]										
840 Interest on Current Loans										
[illegible] Notes										
[illegible] SUB TOTAL	9,396	391,241				29,062	514,070			
900 FOOD SERVICES										
910 Salaries, Food Services										
[illegible]							15,548	2.0		
920 Other Food Service Expense										
[illegible] & Service							300			
Food Service Travel							500			

SCHOOL DISTRICT Central Consolidated NO. 22

COUNTY San Juan

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[illegible]

		1	2	3	4	5	6	7	8	9	10
[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]											
[illegible]	[illegible]	8,000	[illegible]				5,000	19,510			
[illegible]	[illegible]		[illegible]					[illegible]			
	[illegible]							[illegible]			
SUB TOTAL		[illegible]	[illegible]				[illegible]	[illegible]			
[illegible]											
[illegible]											
[illegible]	[illegible]		5,900					6,000			
[illegible]	[illegible]										
[illegible]	[illegible]										
[illegible]	[illegible]	36,580	45,328	2.0				[illegible]	13.0		
[illegible]	[illegible]	11,900	14,216	5.0				[illegible]	14.0		
[illegible]											
[illegible]	[illegible]	3,220	3,909					11,000			
[illegible]	[illegible]	2,715	3,400					[illegible]			
[illegible]	[illegible]	225	265					[illegible]			
[illegible]											
[illegible]	[illegible]	[illegible]	7,000					37,000			
[illegible]	[illegible]	[illegible]	[illegible]					[illegible]			
SUB TOTAL		61,[illegible]	83,595	10.0				245,[illegible]	27.0		
[illegible]											
[illegible]	[illegible]										
[illegible]	[illegible]		25,000					25,000			
[illegible]	[illegible]		500,000					375,[illegible]			
[illegible]	[illegible]		5,100					19,000			
[illegible]	[illegible]	35,500	[illegible]				6,000	192,500			
SUB TOTAL		35,500	702,000				[illegible]	[illegible]			
[illegible]											
[illegible]	[illegible]							2,000			
[illegible]	[illegible]										
SUB TOTAL								2,000			
[illegible]											
[illegible]	[illegible]										
[illegible]	1500.2	50,000	50,000				[illegible]	3,000			
[illegible]	1500.3	33,339	33,339				37,405	37,405			
[illegible]	1500.4	33,812	33,812				58,624	58,624			
[illegible]	1500.5	1,174	1,174				25,000	25,000			
SUB TOTAL		118,525	118,525				124,329	124,329			
TOTAL OPERATIONAL 1000-1500		349,644	4,697,610					5,839,159			
OPERATIONAL EMERGENCY ACCOUNT 1600								[illegible]			
TOTAL OPERATIONAL				359.75			[illegible]	[illegible]	[illegible]		

SCHOOL DISTRICT [illegible] NO. 22

COUNTY San Juan

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DP Code No. ____

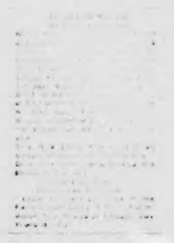
	1	2	3	4	5	6	7	8	9	10
EXPENDITURE CLASSIFICATION	[illegible]	[illegible]	No. of Pers. (Instruct'l Tenths)	[illegible]	No. of Pers. (Instruct'l Tenths)	[illegible]	[illegible]	No. of Pers. (Instruct'l Tenths)	[illegible]	[illegible]
[illegible]										
[illegible]										
[illegible]		[illegible]								
[illegible]		[illegible]					[illegible]			
TOTAL GENERAL FUND		[illegible]					[illegible]			
DEBT SERVICE										
[illegible]		21,670					19,600			
[illegible]		[illegible]					[illegible]			
TOTAL DEBT SERVICE		[illegible]					[illegible]			
SPECIAL PROJECTS [illegible]										
P.L. 89-10 Title I		331,113								
[illegible]		20,000					186,937			
TOTAL SPECIAL PROJECTS		[illegible]								
GRAND TOTAL BUDGET	349,644	5,223,856				407,444	6,363,436			

School District Central Consolidated No. ______

County San Juan

Copy of Legal Advertisement

To Be Attached Here



TENTATIVE APPROVAL AT BUDGET HEARING IN ACCORDANCE
WITH SECTION 77-6-11, N.M.S.A. 1953 COMPILATION

Board President	Board Vice President
Board Secretary	Board Member
Board Member	
Superintendent	
Chief, Public School Finance Division	Date

Comments: ______

FINAL APPROVAL IN ACCORDANCE WITH SECTION 77-6-12, N.M.S.A. 1953 COMPILATION:

Chief, Public School Finance Division Department of Finance and Administration State Capitol Building Santa Fe, New Mexico	Date

Comments: ______

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Submit in Duplicate To:
[illegible]
[illegible]
Santa Fe, New Mexico [illegible]

STATE OF NEW MEXICO
PUBLIC SCHOOL BUDGET
[illegible]

Page [illegible]

RECONCILIATION OF [illegible] BUDGETS AND [illegible]

[illegible]		[illegible]	[illegible]	[illegible]
[illegible]	185,712			
[illegible]	3,172,918			
300	28,122			
[illegible]	41,072			
[illegible]	226,945			
500	438,326			
[illegible]	316,352			
800	814,420			
900	26,348			
1000	73,437			
1100	245,400			
1200	107,200			
1400	2,000			
1500	124,320			
SUB TOTAL	5,859,159			
1600 *	228,155			
	TOTAL OPERATIONAL	6,087,314	6,[illegible]56,[illegible]	8[illegible]9,389
2000	GENERAL BUILDING	185	185	-0-
2100	DEBT SERVICE INTEREST	19,000	19,000	-0-
	DEBT SERVICE PRINCIPAL	70,000	70,000	-0-
2200	OTHER FUNDS:			
	Teachers Quarters	186,937	186,937	-0-
	GRAND TOTALS ALL FUNDS	6,363,436	[illegible],232,185	8[illegible]9,[illegible]

*TOTAL OPERATIONAL BUDGET LESS 100/200/1000/[illegible]/1200/1400/1500 x 5%

COUNTY San Juan SCHOOL DISTRICT Central Consolidated NO. 22

APPENDIX B

ARIZONA DEPARTMENT OF EDUCATION,
Phoenix, Ariz., March 28, 1973.

Mr. DAVID N. BURCH,
Deputy Associate, Area Director Education,
Bureau of Indian Affairs,
Phoenix, Ariz.

DEAR MR. BURCH: The Johnson-O'Malley project form for funding does not seem to be applicable for the Arizona State Plan for Johnson-O'Malley funds. The present plan calls for districts to receive funding on a need basis rather than a project basis. Therefore, this fund request form does not seem to be appropriate for Arizona schools.

Until such time as districts are applying for project funds, there would be no need for this type of application. The type of form that would be most suitable for Arizona at the present time would be the form used by Mr. Jim Turner in figuring district need based upon their adopted budget.

Sincerely,

W. P. SHOFSTALL,
Superintendent of Public Instruction.

APPENDIX C

NATIONAL JOHNSON-O'MALLEY DISTRIBUTION

[1970-71 and projected figures for 1972-73: the State estimate of 16,836 is contained within this interval so there is no significant difference between these 2 estimates]

State	1970-71			Projected 1972-73		
	Johnson O'Malley		P.C. cont.	Johnson O'Malley		P.C. cont.
	Pupils	Amount		Pupils	Amount	
Alaska	$1,300	$1,525,000	$1,168	$4,272	$4,591,000	$1,075
Arizona	15,809	3,965,000	251	17,385	3,937,500	226
Colorado	864	250,000	289	989	288,750	292
Florida	325	25,000	77	318	40,500	127
Idaho	1,904	450,000	232	1,970	525,750	267
Iowa	176	135,000	767	210	157,500	750
Kansas	110	50,000	455	140	57,000	407
Minnesota	3,319	850,000	256	3,446	1,417,000	411
Montana	3,354	710,000	212	4,782	970,750	203
Nebraska	855	390,000	456	914	630,000	689
Nevada	2,665	190,000	71	2,921	215,200	74
New Mexico	13,555	2,553,000	188	16,836	2,254,454	134
North Dakota	1,825	450,000	247	1,891	656,250	347
Oklahoma	17,657	1,550,000	88	19,771	2,099,500	106
South Dakota	4,632	1,320,000	285	4,649	1,680,250	361
Washington	4,297	790,000	184	5,418	1,020,250	188
Wisconsin	1,404	425,000	303	1,536	393,750	256
Wyoming	1,100	100,000	91	1,193	131,250	110
Peripheral dormitories	2,243	1,782,425	795	2,091	2,021,250	967
Total	79,714	19,640,425	246	94,421	23,087,904	245

Note: Figures were not available for fiscal year 1971-72.

1.0
2.5
2.2
2.0
1.1
1.8
1.25
1.4
1.6

APPENDIX D

ARIZONA—1972-73 JOHNSON-O'MALLEY DISTRIBUTION (RANKING BY DISTRICT)

No.	County	School district	Total student enrollment	Eligible JOM enrollment	Percent of Indian enrollment	1972-73 total JOM amount	JOM per pupil amount
1	Navajo	Monument Valley High School [1]	449	388	86.4	$275,341.14	$709.64
2	Do	Alchesay High School [1]	291	225	77.3	110,412.78	490.72
3	Maricopa	Accommodation School		17		8,062.83	474.28
4	Coconino	Tuba City High School [1]	656	426	64.9	171,800.77	403.29
5	Graham	Fort Thomas High School [1]	148	110	74.3	38,310.95	348.28
6	Coconino	Tuba City No. 15 [1]	1,757	1,259	71.6	382,159.68	303.54
7	Apache	Ganado No. 19 [1]	1,545	1,161	75.1	332,278.80	286.20
8	Do	Window Rock No. 8 [1]	2,922	2,540	86.9	681,265.86	268.21
9	Do	Chinle No. 24 [1]	3,601	3,268	90.7	716,485.96	219.24
10	Pima	Indian Oasis No. 40 [1]	1,031	992	96.2	182,931.10	184.41
11	Pinal	Sacaton No. 18 [1]	965	956	99.0	171,476.10	179.37
12	Mohave	Valentine No. 22	39	11	28.2	1,739.02	158.09
13	Apache	Puerco No. 18 [1]	771	507	65.7	62,106.06	122.50
14	Mohave	Mohave Valley No. 16	355	47	13.2	5,000.00	106.38
15	Navajo	Kayenta No. 27 [1]	1,513	1,348	89.0	122,898.75	91.17
16	Do	Keams Canyon No. 25 [1]	461	319	69.1	24,705.33	77.45
17	Yuma	Northern Yuma High School	598	122	20.4	6,712.01	55.02
18	Mohave	Mohave Union High School	2,364	45	1.9	2,000.00	44.44
		State JOM total	75,765	18,972	25.0	3,295,687.04	173.71

[1] Major impact district.

Source: Arizona State Indian Education Annual Report for 1972-73.

APPENDIX E

ARIZONA, 1972-73 JOHNSON-O'MALLEY DISTRIBUTION

County and school district	Total student enrollment	Eligible JOM enrollment	Percent of Indian enrollment	1972-73 total, JOM amount	JOM per pupil amount
Apache:					
Chinle No. 24	3,601	3,268	90.7	$716,485.96	$219.24
Ganado No. 19	1,545	1,161	75.1	332,278.30	286.20
Round Valley No. 10	760	242	31.8		
Navajo Compound Station	31	28	90.3		
Puerco No. 18	771	507	65.7	62,106.06	122.50
Window Rock No. 8	2,922	2,540	86.9	681,265.76	268.21
McNary No. 23	135	32	23.7		
Apache County High School	795	192	24.1		
Total	10,560	7,970	75.4	1,792,136.58	
Coconino:					
Page Public No. 8	2,632				
Tuba City No. 15	1,757	1,259	71.6	382,159.68	303.54
Tuba City High School	656	426	64.9	171,800.77	403.29
Total	5,045	1,685	33.3	553,960.45	
Gila:					
Rice No. 20	1,232	1,182	95.9		
Young No. 5	198	198	100.0		
Total	1,430	1,380	96.5		
Graham:					
Fort Thomas No. 7	386	307	79.5		
Fort Thomas High School	148	110	74.3	38,310.95	348.28
Total	534	417	78.3	38,310.95	

APPENDIX E—Continued

ARIZONA, 1972-73 JOHNSON-O'MALLEY DISTRIBUTION

County and school district	Total student enrollment	Eligible JOM enrollment	Percent of Indian enrollment	1972-73 total, JOM amount	JOM per pupil amount
Maricopa:					
Accommodation School		17		$8, 062. 83	$474. 28
Gila Bend No. 24	729	95	13. 0		
Laveen No. 59	2, 113	105	4. 9		
Mesa No. 4	17, 824	488	2. 7		
Union No. 62	179	122	68. 1		
Tolleson Union High School	1, 150	21	1. 8		
Gila Bend High School	195	13	6. 6		
Mesa High School	7, 181	88	1. 2		
Total	29, 371	932	3. 1	8, 062. 83	
Mohave:					
Moccasin No. 10	23	13	56. 5		
Peach Springs No. 8	170	129	75. 8		
Valentine No. 22	39	11	28. 2	1, 739. 02	158. 09
Mohave Valley No. 16	355	47	13. 2	5, 000. 00	106. 38
Mohave Union High School	2, 364	45	1. 9	2, 000. 00	44. 44
Total	2, 951	245	8. 3	8, 739. 02	
Navajo:					
Kayenta No. 27	1, 513	1, 348	89. 0	122, 898. 75	91. 17
Keams Canyon No. 25	461	319	69. 1	24, 705. 33	77. 45
Whiteriver No. 20	1, 158	1, 036	89. 4		
Alchesay High School	291	225	77. 3	110, 412. 78	490. 72
Monument Valley High School	449	388	86. 4	275, 341. 14	709. 65
Total	3, 872	3, 316	85. 6	533, 358. 00	
Pima: Indian Oasis No. 40	1, 031	992	96. 2	182, 931. 10	184. 41
Pinal:					
Casa Grande No. 4	3, 437	50	1. 4		
Coolidge No. 21	2, 411	136	5. 6		
Maricopa No. 20	462	83	17. 9		
Sacaton No. 18	965	956	99. 0	171, 476. 10	179. 37
Stanfield No. 24	544	27	4. 9		
Casa Grande High School	1, 412	144	10. 1		
Coolidge High School	844	46	5. 4		
Maricopa High School	161	18	11. 1		
Total	10, 236	1, 460	14. 2	171, 476. 10	
Yavapai:					
Prescott No. 1	3, 641	15	. 4		
Prescott High School	2, 023	18	. 8		
Total	5, 664	33	1. 2		
Yuma:					
Crane No. 13	1, 903	13	. 6		
Parker No. 27	1, 310	362	27. 6		
Somerton No. 11	1, 260	55	4. 3		
Northern Yuma High School	598	122	20. 4	6, 712. 01	55. 02
Total	5, 071	552	10. 8	6, 712. 01	
State total	75, 765	18, 972	25. 0	3, 295, 687. 04	

Source: Arizona State Indian Education Annual Report for 1972-73.

APPENDIX F

STATE OF NEW MEXICO,
DEPARTMENT OF EDUCATION,
Santa Fe, N. Mex., April 8, 1974.

Re Proposed Johnson-O'Malley Regulations.

Mr. MORRIS THOMPSON,
Commissioner of Indian Affairs, Bureau of Indian Affairs,
Washington, D.C.

DEAR MR. THOMPSON: On January 14, 1974, you published proposed revisions to the Johnson-O'Malley regulations (33 C.F.R.). On February 28, 1974, a number of Indian organizations and other organizations concerned with Indian education problems proposed an alternative set of revised Johnson-O'Malley regulations, which I will hereafter refer to as the "Red Regs." I and my staff have studied the proposals and I feel that it is incumbent upon me, as the Superintendent of Public Instruction in a state with a large Indian student population, to indicate to you the position of the New Mexico State Department of Education on the proposals.

In my opinion, speaking for New Mexico, the regulations proposed on January 14 were wholly inadequate. The time for a definitive Federal policy concerning Johnson-O'Malley is long past due and the regulations as proposed on January 14 do little more than attempt to clarify the eligibility question. In actuality, the proposed rules tend to make many issues even more obscure than before, including the issue of eligibility.

I have the following comments about the "Red Regs" which should receive your consideration:

1. I definitely feel that the JOM regulations should be a complete document and that essential information should not be hidden away in the BIA Manual.

2. I believe that Indians should establish eligibility and that services should be provided to Indian students from whomever can best do the job. When this is not the public school, the local Indian people should have the authority to deal with other educational agencies.

3. I firmly support the idea of the "parent contracting institution" and community authority and responsibility with regard to the use of Johnson-O'Malley funds. I have recognized that the major problem with regard to the state administering JOM funds is the distance that separates us from the local Indian communities. Therefore, we have encouraged the Bureau to contract with Indian groups when these groups have indicated their desire to contract. It should be noted that two BIA area offices are servicing Indians in the state of New Mexico and that policies widely differ between them. While the Albuquerque Area Office readily contracts with Indian groups, the Navajo Area Office continues to thwart the stated intention of the Navajo Tribe to contract. It is hoped that any new regulations will be backed by a strong policy of the central office with regards to Indian groups contracting JOM funds.

4. I agree that JOM funds should be used for supplemental purposes only and that the use of these funds for basic support purposes by public educational agencies should not be allowed except in the very limited and tightly circumscribed situations allowed in the "Red Regs".

5. I agree with the "Red Regs" that funds should only be spent on eligible Indian children; however, we would like to see a provision in Section 33.5(c) which would allow non-Indians to participate if authorized by the Indian community education committees. This reflects the need for cultural awareness by non-Indians of Indian problems and in such circumstances would benefit Indian students.

An earlier set of alternative regulations was developed and submitted to you by representatives of the New Mexico Indian Education Board of Regents, Navajo, Zuni, and Mescalero tribes. These regulations received the support of our director of our Indian Education. We feel that these regulations complement the "Red Regs," but are not as comprehensive. We, therefore, urge you to utilize the "Red Regs" as a point of departure for developing new regulations and hope that new regulations will not deviate from the basic principles stated therein.

As you well know, the state of New Mexico has been the scene of several significant lawsuits involving violations of the present Johnson-O'Malley regulations. The thing that was most apparent from the lawsuits was that the present regulations are so vague as to be useless. The state and its school districts do not have sufficient guidance; such regulatory guidance is a necessity. The regulations you proposed on January 14 do not remedy that situation; the "Red Regs" do.

The issue of self-determination should receive some attention also. The January 14 proposal does not provide any more self-determination for Indian groups than is currently provided. The "Red Regs," on the other hand, are specifically designed to provide a maximum of Indian self-determination. You are aware that the Nixon Administration unequivocally supports this concept. Promulgation of the January 14 proposal, or anything resembling them, would be a violation of the Administration's position.

We stand ready to assist your efforts in developing viable regulations in every way possible.

Sincerely,

LEONARD J. DE LAYO,
Superintendent of Public Instruction.

APPENDIX G

[From The Arizona Republic, Apr. 19, 1972]

INDIAN SCHOOLS NEED MORE AID, STATE TELLS U.S.

(By David Fitzpatrick)

The State Department of Education said yesterday it needs $1.1 million from the federal government to help operate 15 public school districts on state Indian reservations for the rest of the fiscal year.

If the extra money is not forthcoming, Deputy State School Superintendent Gus W. Harrell said, these districts will be forced into a deficit for 1971–72 and could be forced to drive up their tax rates, perhaps to as high as $30 to $50 per $100 in assessed valuation.

Major reasons for the shortage, Harrell said, are estimates of financial need for these districts are placed with Washington officials 18 months to two years in advance and that the Bureau of Indian Affairs has never allocated enough money for public school support in the first place.

Harrell, who met in Washington last week with BIA officials, said Sen. Paul Fannin and Rep. Sam Steiger, both R-Ariz., promised to do "everything they can" to seek emergency appropriations from Congress.

The 15 school districts are on or near the Gila River, San Carlos Apache, White Mountain Apache, Navajo and Hopi reservations, Harrell said. They have a total average daily attendance of 12,763, which he said translates into between 14,000 and 15,000 pupils.

According to a plan drawn up in 1969 by the State Department of Education, the BIA pays the state whatever money is needed to assure that public school districts with heavy Indian student enrollments are on an equal financial footing with other districts.

The state needs this agreement because parents of Indian children, whether the children attend reservation schools or go to public schools, pay no taxes. Thus, the districts involved must levy a tax equal to the statewide average school district property tax on the few landowners who are eligible to pay—normally large utilities that have operating plants on or near reservations.

To make up the difference between these taxes and what the districts require to operate, the BIA pays its money.

BIA officials allocated $3.5 million to the state this year as its share of the cost, but Harrell said it wasn't enough and the $1.1 million is needed to continue operations without a deficit.

If Congress refuses the appropriations, he said, the districts could be forced to shut down, although he said this wouldn't occur for about two years.

If the same BIA funding policies remain in effect next fiscal year, the state will need another $1.4 million in government funds to keep the districts running. The BIA has budgeted $3.7 million for this purpose in Arizona next year and it isn't enough, Harrell said.

"They (BIA) are thinking about redesigning the regulations," Harrell said, adding that there has been no indication of when a revision in policy might come about.

The 15 districts, Harrell said, have been in similar straits in past years, but it has never been as serious before. He said he didn't know the amount of shortages in past years but the $1.1 million is "considerably higher" than previous amounts.

Mr. Meeds. Our next witnesses are Mr. Birgil Kills Straight and Abe Plummer, Coalition of Indian Controlled School Boards—oh, I have just been advised that they will not be here.

Your name is, sir?

STATEMENT OF JIM RACINE ON BEHALF OF THE COALITION OF INDIAN CONTROLLED SCHOOL BOARDS

Mr. Racine. Mr. Chairman, I am Jim Racine and I am with the coalition.

Mr. Meeds. With the Coalition of Indian Controlled School Boards?

Mr. Racine. Yes, and I will be testifying on its behalf.

Mr. Meeds. Fine. Welcome, Mr. Racine. And please be seated and present your testimony.

Mr. Racine. I will not be going through the whole booklet. I will only read four pages.

Mr. Meeds. What is in the booklet?

Mr. Racine. It is made up of previous testimony that the coalition has made on S. 1017 and included in this of course is the Red Regs which Mr. Jones has referred to and which we helped develop as well and support.

Mr. Meeds. It seems to me that this might very much aid the committee and unless there is objection, we will make your statement about S. 1017, the statement of the Coalition of Indian Controlled School Boards, dated February 27, 1974, a part of the file.

Without objection, so ordered.

[The statement of the Coalition of Indian Controlled School Boards can be found in the files of the subcommittee.]

Mr. Meeds. Please proceed, sir.

Mr. Racine. Honorable chairperson and members of the hearing committee. We of the Coalition of Indian Controlled School Boards, Inc. are deeply gratified to have this opportunity to add our input into this historic legislation S. 1017. Our previous testimonies which were given before Senate hearing committees on S. 1017 are added to this testimony as appendices.

Permit me to introduce myself and my associates. I am Jim Racine, a Blackfeet Indian from Montana and I am proudly affiliated with the very fine grass roots organization of the Coalition of Indian Controlled School Boards, Inc. in the capacity of codirector.

We, the staff and executive board members of the coalition support S. 1017 in philosophy and in general concept. However, we strongly recommend: (1) that the definition of "Indian" be rewritten to include urban Indian people and Indian people of the United States who are nontreaty Indians and landless; (2) that rules and regulations for the administration of S. 1017 be prepared by the Congress of the United States.

The Coalition of Indian Controlled School Boards constituency is made of urban Indian people, nontreaty and landless Indians. Nontreaty or landless U.S. Indians were and are continually denied any treaty status or tribal recognition because of their tribal size or their tribal traditional homes were in the wrong locations to be recognized. These people have suffered more enslavement, land usurping without due process, discrimination, lack of services and ill will than other groups of people in the United States at the hands of their Euro-Anglo counterparts. Billions of dollars in resources have been gained from the lands illegally taken from Indian people throughout the United States. The U.S. citizens and elected officials have continued to deny any obligation of debt to these people. Which is not particularly astounding considering that debts owed to the treaty people are partially paid only after long tedious and expensive litigation.

There are urban Indians who are receiving little or no services and if all decided to move home would swamp their reservations. For example, there are approximately 5,000 Blackfeet Indians living on the Blackfeet Reservation in Montana and another 5,000 living off the reservation. The reservation does not have the land and economic resources to support the Blackfeet Indians who are living in the urban areas if they should choose to return to the reservations. Most Indians in urban areas find themselves living in a bewildering frustrating world of alcoholism, welfare, cultural deprivation, prejudices and poverty. The fine arts of street living have to be learned and existence is just survival. Education is not a panacea for all of the aforementioned problems but certainly is a major factor in correcting them. Urban areas claim that their schools have better records for retaining Indian children in school.

I would like to cite an example here if I may interject this. I was a probation officer with the San Diego County Probation Department in California and I had operating capacity of being a probation officer for approximately 2 years. We had this one Indian boy who was costing something like $33,000 to keep him in school. This was in the form of law enforcement officers, truant officers, and probation officers and welfare assistance and so on. They would get this boy in school and he would last perhaps a day or two before they would turn their back and away he would go again. They would put him in juvenile hall and turn their backs and over the fence he would go and he would disappear when they turned their backs.

Well, the upshot of the thing is they asked me to find the boy and make an assessment of the situation as well as come back to the court with a recommendation. I found the boy and came back with the recommendation that they leave the boy alone because there was nothing that the school could offer this kid. He was totally self-supporting.

But the reason I bring up this example is that the school systems themselves regardless of where they are at, whether they are in urban areas or on reservations and so on do not offer the programs that are needed by Indian students in order for them to capitalize on the opportunities that are being offered.

Those records are not and cannot be attributed to the quality of education but are more directly related to the legal leverage that can be exerted against the parents. Physical presence in schools does not mean that the person has not dropped out. Truancy and delinquency amongst urban Indian children exceed the national average as well as the ethnic rates of arrested and convicted Indian adults exceeds all others.

It is therefore respectfully requested that S. 1017 include services to urban and disenfranchised Indian people.

We of the Coalition of Indian Controlled School Boards, Inc. strongly recommend that rules and guidelines for the administration funds for contract schools and other education funds for Indian people be drafted by Congress as well as the BIA structure of administrating the funds be set by Congress. BIA does not have the means by which such funds can be equitably administered. Johnson-O'Malley funds certainly have not served Indian people but were used to sustain and support educational institutions—that is, schools.

It is recommended that a central contracting agency be set up to execute contracts with State educational agencies, local educational agencies and Indian school boards. A central contracting agency would eliminate redtape, differences in philosophy of administration and would partially eliminate the cost of maintaining regional offices.

The Coalition of Indian Controlled School Boards, Inc. further recommends that more moneys be made available for the development of Indian community colleges, 4-year colleges and universities. It is recommended that the institutions of higher learning be under Indian control and direction.

The Coalition of Indian Controlled School Boards, Inc. acknowledges the efforts and good work done by the U.S. Congress relative to Indian education. It is regrettable that conditions were so bad that so much work had to be done. The conditions of Indians and education are as reported in part of 2 parts of the "First Annual Report to the Congress of the United States from the National Advisory Council on Indian Education". The recommendations we have made today will serve to strengthen S. 1017.

Again, we thank you honorable chairperson and committee for this opportunity to testify on behalf of S. 1017.

We have an addendum which I will place in the record.

[The addendum referred to will be furnished at a later date.]

Mr. RACINE. Again we thank you very much.

Mr. MEEDS. Thank you very much, Mr. Racine. I just have a couple of questions please.

First, I certainly agree with you that something has to be done with the definition of the word "Indian" in the bill to better respond to the problems of urban Indians who might not come under the definitions in the bill, especially if you combine the definition of "Indian" and "Indian organization."

But don't we also run into some kind of problems there? For instance, say a school district has an entire student population of 5,000 in which there are 10 Indian children. You don't have the same problems that you have in a school district such as the ones Mr. Jones mentioned where the Indian population is 50 and 60 percent. What I am asking is this: don't we reach some kind of de minimis rule under which a school district which had a very small Indian population might not be entitled to anything under the bill?

Mr. RACINE. I think my personal bias is if there are 10 Indian students in say a population of 15,000 students, my personal bias would be that those 10 Indian students should be receiving some sort of services because it can be very generally established they are going to be somewhat behind the general population. And I really would suspect that those 10 percent or those 10 Indians are probably only 5 percent of the total Indian population that is in the area because I would suspect that there is about 25 percent of that school population out of school.

Mr. Meeds. Even under Public Law 874 the district couldn't receive anything unless there is over a certain number or a certain percentage of the student population who are impact aid children.

In other words, there is some absorption there. This is based on the concept that it might cost more to administer a program where there were fewer beneficiaries than it would be worth.

What I am saying is it seems to me we have to provide some kind of a method, either by regulation or by the statutes, so that if we extend the meaning of "Indian" to do what both you and I want to see done, we don't run into having an expensive administrative procedure in a school district in which there were only 10 Indian children of a total student population of 15,000.

Mr. Racine. I fully understand your argument, actually this has happened in say, Reno, Nev., for instance, where for so many years nobody knew Johnson-O'Malley funds existed except the school district knew that they were there. Of course in Reno there is a high Indian population.

Well, not to carry the story further than intended for the purpose of the point I am trying to get to, but there was no Indian cultural instruction at all in Reno. The English exercises in the books that they were training the kids in English, in English literature or whatever you want to call it, were on Greek mythology, which is fine. You know, like there ought to be an introduction to Greek mythology and then if the person wants to pursue it thereafter for an indepth study, fine, if you want to study Greek.

But my point is, Mr. Chairman, we started a small inexpensive Indian program for the Indian students in Reno. And from the basis of their experiences, their cultural experiences, we started them in English and we otherwise made the assumption that they knew no English at all and had little ability in writing.

Well, within a 6-month period we were able to effectively improve or effectively help the kids that were having difficulty and improve their ability in English at least 2½ years over and above from when they started with us.

So, consequently, I would say that when it comes to Indian programs, right now we have a financial and administrative headache because we have so many experts involved in administration and particularly in the area of Indian education that have no expertise whatsoever. So, actually, what we are doing is pouring money down a rat hole.

Mr. Meeds. Are you satisfied with the description of a "tribal organization" in section 4(e) which says:

> Tribal organization means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organizations) and which includes the maximum participation of Indians in all phases of its activities.

Mr. Racine. I am basically satisfied with that because if we expanded it I think we would get into semantic difficulty. Right now we are at the point where we are at the loggerheads with some very strong political Indian groups that are crying that we are exceeding or overstepping ourselves as far as tribal sovereignty is concerned.

Mr. MEEDS. The gentleman from Ohio.

Mr. REGULA. No questions.

Mr. MEEDS. Our next witness is Mr. Raymond Paddock.

Mr. Paddock, delighted to have you here. Please come forward and present your testimony. If you are accompanied by somebody, would you please introduce them to us?

STATEMENT OF RAYMOND PADDOCK, EXECUTIVE DIRECTOR, CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIANS OF ALASKA; ACCOMPANIED BY JOSEPH WILSON, NATIVE AGENCY DIRECTOR, SOUTHEAST ALASKA AGENCY, CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIANS OF ALASKA; AND DR. WILLIAM CARMACK OF OKLAHOMA

Mr. PADDOCK. Mr. Chairman, I am accompanied by Joe Wilson, who is director of our Southeast Native Agency and Dr. William Carmack of Oklahoma. I would like to make my apologies for President Clarence Jackson, who could not be here to present the testimony.

Mr. Jackson is a fisherman and he had to be at the opening of the fishing in Alaska right now.

I would also like to make apologies to the committee for not having enough copies of our testimony. We are not prepared to present our testimony today on such short notice and the testimony will be delivered before the end of the day to the committee.

Mr. Chairman, basically we are here because we are the result of an experiment by the Bureau of Indian Affairs begun 3 years ago. We have a contract to direct our own Native agency for the Bureau and I believe it is one of three in the Nation. Ours differs in that we have hired our own Native agency director and have hired our own staff and in effect we are an experiment in self-determination.

My name is Raymond Paddock. I am executive director of the Central Council of the Tlingit and Haida Indians of Alaska. I have with me Mr. Joseph Wilson, who is the Native agency director of the Southeast Alaska Agency of the Bureau of Indian Affairs, and Dr. William Carmack of Oklahoma, who serves as a consultant to the central council and who has been a member of the evaluation team which has twice assessed the effectiveness of the council's administration of the Southeast Alaska Indian Agency under its contract with the BIA.

I am here today to offer testimony on behalf of the Tlingit-Haida Central Council in support of S. 1017, the Indian Self-Determination and Education Assistance Act. Although each title of the act is important and should be of considerable benefit to Indian and Alaskan Native groups, I wish to focus my testimony on title I, the Indian Self-Determination Act. The members of the Tlingit-Haida Central Council feel that we are in a unique position to comment on this legislation inasmuch as we have been involved in the administration of our own Southeast Alaska Agency of the Bureau of Indian Affairs for a 3-year period. We have effected this involvement through contracts and continuing program agreements with the Bureau. In spite of some difficulties and shortcomings in our arrangement, we are convinced that the contracting device does indeed offer to the tribe an opportunity for self-determination not available when BIA programs and services are administered in the conventional way.

The central issue involved is not the nature of Federal services provided to Native groups, or even the amount of Federal expenditures on these services. It is, rather, the question of control of priorities and planning in the process of providing these services. For many decades, the Federal Government has provided to Indian tribes and communities an array of services hoped and intended to meet their often rather special needs. Traditionally these services have been provided for the Native groups by Federal administrators. The purpose of this legislation, as has been the aim of the central council's experiment in contracting with the Bureau for the past 3 years, is to insure the continuing provision of these services and the continuing observance of the Federal trust responsibility in an improved environment where the tribes and communities can become involved in the processes of identifying program priorities and of actually conducting the programs funded by the Federal Government for their benefit.

On balance, we feel that our experiment has been successful, although, as Mr. Wilson will point out shortly, it has not been free of difficulties. One of the important aspects of the proposed legislation is the initiative it extends to Indian tribes to take over programs of their own choosing. The concept of contracting for services is not new. For many years the Bureau of Indian Affairs and other Federal agencies have contracted hundreds of programs to local groups. The important new aspect of this legislation, however, is that under it these contracts no longer will be subject entirely to the sufferance of the Federal Government, but can be initiated by the tribes and Native villages. There is provision for the Government to refuse to enter into a contract, but, if it does, it must detail its reasons for refusal and take steps to prepare the communities and tribes for contracting. Further, this legislation, for the first time in the history of Indian affairs, will mandate contracting as a national policy rather than leaving the decision of whether to use it to the vagaries of the attitudes from time to time of individual officers and agencies administering Indian programs. The provisions of this act are applicable equally to the Secretary of the Interior, who is administratively responsible for the Bureau of Indian Affairs, and to the Secretary of Health, Education, and Welfare, who is administratively responsible for the Indian Health Service. Although several other Cabinet officers administer specific Indian programs, these two operate the most important by far to the Indian communities. Thus, the opportunity this legislation will afford the tribes to coordinate the administration of the major programs should go far to secure a unity and integrity in their conduct and results not previously experienced.

I would like to highlight an anomaly that, in my view, has caused years of delay in implementing the concept of local control of federally funded Indian programs. Typically, Native tribes and communities have not had among their number persons trained in operating sophisticated educational, medical, social, and economic programs. Thus, the position of Government administrators has been essentially that while they might wish to surrender control of services and programs to local

Indian communities, they feel that there are no Native individuals within those communities capable of discharging the required level of administrative responsibility.

Here is the paradox! For many years, the Federal Government has funded programs in non-Indian communities across the Nation, such as housing construction, hospital construction, airport construction and the like. In addition, Federal impact funds have been channeled into local schools near military bases. Most of these programs have been administered by local government officials and entities, but not necessarily managed and operated by residents of the community. A typical small community in the United States might have a mayor and a city council who are ultimately responsible for the administration of local programs. But these officers and agencies frequently reach out for personnel to actually manage the provision of community services; thus, a fire chief, a chief of police, a superintendent of schools, and the like will be appointed by and responsible to a local elected body. But such administrators often do not come from the community they serve.

It is not born and raised in the community. What is important is that they understand as administrators of local services that they are responsible to the community. Indeed, if their performance is not sensitive to community needs, they can be replaced by the local governing body. Why then do we require that Native communities grow their own professional expertise? Hopefully, that is being done and, increasingly, will continue to be done. But, in the meantime, must Indian communities stand aside and submit to external control of services simply on the ground that presently they do not number among their citizens people who have graduate degrees in education, previous experience in law enforcement administration, and the like. This legislation will empower Native communities to perform in much the same way as other American communities have performed in the past. We will have within an elected governmental entity the power to administer federally funded programs. Of course, we will be obliged to account for our stewardship both as to handling of funds and quality of services. To acquit our responsibilities, we will select from among our own members or from outside, the kinds of people who can be most effective in the actual provision of the services for which we are responsible. As I have indicated, this is not a new concept. It is the modus operandi of local governments throughout the United States, except in Native communities. I believe that the power to contract with the Government to administer ourselves Federal programs for our benefit is the key finally to achieving the often stated national goal of Indian self-determination.

Mr. Wilson, who is responsible for the administration of the Southeast Alaska Agency, has served as the administrator of the kind of program this act envisions for the past 3 years. He will comment more specifically upon the provisions of the legislation.

Mr. MEEDS. Very well. We will wait until you both finish your testimony. Do you have a statement here you want to read or to summarize?

Mr. WILSON. I would like to read it, Mr. Chairman.

Mr. MEEDS. All right. Please proceed.

Mr. WILSON. It is my pleasure to come before your committee. I did appear before your committee once before when you held hearings in Juneau, Alaska, in August of 1973.

My name is Joseph Wilson. As an officer and employee of the Central Council of the Tlingit and Haida Indians of Alaska, I serve as the Native agency director of the Southeast Alaska Agency of the Bureau of Indian Affairs. For approximately 3 years, I have served as principal administrator of the Southeast Alaska Agency under a contract between the central council and the Bureau of Indian Affairs.

I have reviewed the Indian Self-Determination Act, title I of S. 1017, in the light of our experience in implementing the kind of contractual relationship this bill would further authorize. I fully concur with Mr. Paddock that, although our relationship with the BIA under our contract has been at times difficult and cumbersome, we feel the arrangement has been markedly successful in terms of the people we serve. There is a level of commitment and interest on the part of the Indian people under their own administration that was not achieved when these programs were administered directly by the Bureau of Indian Affairs. Further, we have been able to shape and mold the programs of the Agency to the real needs of our people much more subtly and effectively than was the Bureau under conventional administration. I would like to submit for the record a copy of our recent semiannual report which details the accomplishments of the programs we administer.

Mr. Chairman, I have two copies here that I would like to present to you at this time.

I would like to specifically call to the attention of the committee the section on education of the young. This has been one of our highest priorities in Alaska, and one of the most difficult programs to handle effectively. We are proud of the program innovations effected under our management contract and suggest that they serve as an example of the kind of program improvements that are possible when Indians are given the ability to administer their own affairs. I would now comment briefly on seven specific provisions of the act.

I am pleased to notice that provision has been made in the bill for advance payment for administrative services. Unfortunately, the Juneau area office of the Bureau of Indian Affairs was not in a position to advance administrative expenses under our contract. Indeed, 17 months elapsed between the time we commenced our administration of the BIA Agency and our first reimbursement from the Bureau. During that period, the central council had to borrow from a local bank approximately $100,000 to fund administration of this contract. When we were finally paid by the Bureau, the interest on this debt was disallowed. Happily, we were in a financial position to operate for 1½ years without reimbursement. Obviously, small Native communities or Indian tribes without financial resources could not participate in this kind of contract arrangement. Advanced funding in those cases will spell the difference between taking advantage of the concept of self-determination or not.

I also appreciate the provision in the bill for contracts ranging from 1 to 3 years in duration, assuming annual funding. Unfortunately, for most of the 3-year period that we have engaged in the administration of our own agency we have been operating under short-term extensions of our original 1 year contract with the Bureau, rather than under a firm contract. First, after we received our original contract, authority for contracting was questioned by the Bureau and numerous other procedural details seemed to make it impossible for the Juneau area office to come forward with a specific binding annual contract.

On two occasions a review team representing both the central council and the BIA has convened to evaluate the Agency and its performance. One of the recurring problems the team found was the failure of the BIA to be ready at the proper time with a specific contract. Instead a series of delays have resulted in a kind of ongoing agreement in which authority is not really transferred on a firm basis, and personnel are not certain whether they work for the central council or the BIA. This has resulted, as one would expect, in morale problems and considable confusion among employees. This bill, had it been the law 3 years ago, would have been enormously helpful in this area.

I am pleased that this act provides for retrocession of the administration of programs by a tribe to the Bureau. I support the provision not because I think tribes will find themselves unable to handle their new administrative responsibilities, but because it will provide them with a weapon against possible funding discrimination on the part of the Bureau. When funds are in short supply, it might be tempting for an area office of the Bureau to adequately fund those programs and agencies under its own supervision and skimp on those contracted to tribes. If this should happen frequently enough to establish a pattern, a tribe would have recourse to recall the Federal administration and rectify these inequities.

It occurs to me, however, that the use of the term "retrocession" and the phraseology of the proviso in section 106(d) is awkward and may be confusing. Ordinarily, the right of a party to abrogate a contract is spoken of as a right to rescind or cancel, not as a right to "retrocede" the contract.

I take it that the provision is intended to give a tribe the right to cancel a contract in whole or in part on 120 days notice, in which event the Agency with whom it was made would be required to resume the administration of all programs and the provisions of all services that were covered by the contract on a nondiscriminatory basis.

I believe it might be more artfully drafted to express this intent.

One of the most difficult and confusing aspects of our experience in contracting has been the realtionship between the Native agency administration and the BIA personnel retained in the various branches. This bill clearly spells out for the first time the rights and privileges of a Federal civil servant who finds his position contracted to tribal administration. In essence he has a 2-year period and, at the request of both parties, an additional 2-year period to either serve out his tenure, decide whether he wishes to transfer to another Federal position, or become an employee of the contracting tribe. Had we been able to offer this kind of opportunity and option to Federal employees at our Agency, we would have reduced dramatically the morale problems we have experienced. We have chosen not to replace all BIA personnel with our own employees. As Mr. Paddock indicated, we do not feel it is necessary that services be performed solely by Tlingit-Indians or by employees of the central council.

We know that there are many dedicated effective employees of the Bureau of Indian Affairs, and it has been our policy to encourage them to stay on in their positions under our administration. We do not feel it is critical that they come from our communities, but we do know it is critical that they understand that they work for our communities. On balance, we are pleased with their services and commitment. From time to time as positions become vacant by resignation, retirement, or transfer of incumbents, we may refill them with local people, but only if we can find local people with the necessary experience and competence. In the meantime, we enjoy a good working relationship with the personnel we inherited from the Bureau at the time we commenced operations under the Agency management contract.

In passing, I would note that this legislation specifically protects Native groups against any erosion of the trust responsibility. Self-management has been delayed in years past because groups have feared that any initiative on their part to administer federally funded programs might be a step toward termination. Fortunately, the language of this bill speaks to this point very directly and reassuringly. Tribal administration of federally funded services must not lead to a reduction in Federal trust responsibility.

The detailed time table specified in this legislation for its implementation is salutary. As I indicated earlier, we have had serious problems with the Juneau area office in connection with the preparation of contracts on time. In fact, 18 months ago, the contract review committee recommended that a firm contract be negotiated by January of 1973. The area office was not able to accomplish this and suggested as an alternative July 1, 1973. The central council agreed to this date but it was not met. Finally, the review team, about 18 months later, noted that there still was no contract and no reasonable expectation that one would be ready even by July 1, 1974. This act will serve to stimulate the Bureau to regularize and expedite its contract processes so that this kind of delay and confusion can be avoided.

I wish, finally, to commend the provisions of this act which require consultation with Indian organizations prior to the promulgation of rules and regulations. We are vastly better prepared than we were a decade or two ago to meaningfully participate in and contribute to the process of rulemaking. Most Native groups now have among their number, or available to them, professional people such as attorneys, accountants and the like. All too often the kind of consultation called for in this legislation has resulted simply in powerless and rather vacuous advisory boards. We trust the recent experience of the Department of the Interior, in connection with the drafting of land selection regulations under the Alaska Native Claim Settlement Act, has convinced it that the Native people will no longer be shunted aside in the process of preparing administrative rules to implement legislation designed for their benefit.

In summary, based on 3 years of contracting experience, we are convinced that the devices provided by this legislation are well designed to bring real self-determination and local control to Native communities. We look forward under this legislation to a far smoother and more effective relationship with the Bureau and with our own constituents than has been possible without it. For these reasons, we strongly endorse the Indian Self-Determination Act.

Mr. MEEDS. Fine, thank you gentlemen.

Mr. Wilson, would you describe some of the types of programs in which the Tlingit-Haida Central Council is presently administering?

Mr. WILSON. Under this contract?

Mr. MEEDS. Yes.

Mr. WILSON. We provide the social services program. Also, we provide the adult vocational training, the direct employment and housing improvement, and we administer one day school in our Agency and one field office.

Mr. MEEDS. What kinds of social services are you involved in?

Mr. WILSON. We are involved in the general assistance program and also we provide emergency assistance to the aged and also we provide temporary foster home placement of children.

Mr. MEEDS. And you would conclude on balance, that while there have been some problems, you have been relatively able to handle those?

Mr. WILSON. Yes.

Mr. MEEDS. Mr. Paddock, do you have a copy of the bill?

Mr. PADDOCK. Yes.

Mr. MEEDS. Would you turn to page 4, section 4(b), the definition for "Indian tribe" and it means "Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States."

And I would ask if it is your feeling that Tlingit-Haida Central Council would fit under that description?

Mr. PADDOCK. We do have one small problem with that. Under the Alaska Native Claims Settlement Act, there were also 12 regional corporations named.

Now the Agency that administers this contract is a regional corporation. And I believe this would be clarified if regional corporations were entered under section 4(b).

Mr. MEEDS. Actually, if we were to put right after "Native villages" if we were to put "or Native regional corporations" that would take care of that problem.

Was your organization authorized by the Settlement Act? Wasn't it in existence prior to the Settlement Act?

Mr. PADDOCK. Yes, it was.

Mr. MEEDS. Was it not specifically excluded?

Mr. PADDOCK. All of the regional corporations named in the Settlement Act were nonprofit corporations, Mr. Chairman. There have since been named 12 other profitmaking corporations so there are now 24 Native corporations in Alaska.

Mr. MEEDS. Counsel reminded me of that.

Mr. PADDOCK. The profitmaking corporations do not deal in human services.

Mr. MEEDS. What we are going to have to do is include those regional corporations and other organizations as chartered by regional corporations, or how do you think we should take care of that?

Mr. PADDOCK. Well, in our case it wouldn't be a problem because we are federally recognized as a tribe in existence before the act. However, in the others there may be some clarification needed for their benefit. I would think that the nonprofit corporations in the other 11 regions would be the ones interested in this bill.

Mr. Meeds. OK, thank you very much. We appreciate your testimony.

The gentleman from Ohio.

Mr. Regula. Mr Paddock, in what way do you think the services performed by your group have been an improvement as compared to the BIA process?

Mr. Paddock. Well, I think there has been a distinct improvement.

When we went after this contract, we went after it because we wanted it and we are administering it with a great deal of enthusiasm. Let me give you one example. When the BIA had the contract they were about 130 of our kids in college. With our own administration we now have this year 440 in college.

When the BIA, when the Bureau of Indian Affairs had it, the dropout rate was about 30 percent. We've got that down to about 7 percent I believe.

Mr. Regula. How many students are in the program?

Mr. Paddock. In higher education?

Mr. Regula. Well, don't you have elementary and secondary too?

Mr. Paddock. Maybe Mr. Wilson could answer that. In higher education we have 440.

Mr. Regula. But how many do you have under your total direction?

Mr. Wilson. As I mentioned before, we administer one BIA operated base school in our agency and they have an enrollment of not more than 20 students. It is an elementary school. We also process applications for students that attend BIA boarding schools that are not under our agency operation but are almost a separate agency organized in the Bureau of Indian Affairs. We process probably not more than 60 applications of that nature to various BIA boarding schools, primarily the boarding school located at Sitka Alaska; the Rangle Institute located at Rangle, Alaska; and we send still a few students to Chemawa Indian School.

Mr. Regula. Do you operate a high school?

Mr. Wilson. We do not operate a high school.

Mr. Paddock. There is a BIA high school but it is not part of our agency.

Mr. Regula. What does your agency do with the college students?

Mr. Paddock. With the college students? We fund them. We help them. We also counsel the precollege students to encourage them to enter into college then we provide the funding to get them through college.

Mr. Regula. In reality then you are not operating a school system from kindergarten through 12?

Mr. Paddock. No we are not.

Mr. Regula. Your experience is simply limited to funding students in a college of their choice.

Mr. Paddock. That is right.

Mr. Regula. What is your budget for these services?

Mr. Wilson. OK. I think if you can refer to the report that I gave to you, it describes the number of students we had in the program, when we first took the administration of the grant in aid program over, and so on. In 1971 the numbers of students that were in the program at that time were 156 and it just increased up to the present time where we have approximately 420 students in the program. Next year we anticipate over 550 students in the program.

Mr. REGULA. What is the administrative cost of your operation? You show us here the total expenditure, which I assume is for the grants and aid to the students——

Mr. WILSON. Yes.

Mr. REGULA [continuing]. But how much does it cost to operate your program and get these grants and aids out?

Mr. WILSON. OK. I think I mentioned in that report that contract that we have with the Bureau to administer this program is for $30,000. It provides for one full time education coordinator to head up the program and one secretary. We have a dire need, as I mentioned in my report, with the increased number of students, to add an additional position as a counselor.

Mr. REGULA. Well, neither of you are involved in that role in working directly with the agency?

Mr. WILSON. I am the Native agency secretary of the Southeast Alaska Agency. When we entered into the contract with the Bureau to administer the agency program I replaced the traditional BIA superintendent.

Mr. REGULA. That is all.

Mr. MEEDS. Thank you very much, gentlemen. We appreciate your testimony.

Our next witness is Dr. Myron Dickey, Utah State University, Logan, Utah.

Dr. Dickey, please come forward.

STATEMENT OF DR. MYRON DICKEY, UTAH STATE UNIVERSITY, LOGAN, UTAH

Dr. DICKEY. Mr. Chairman, and others, it is a pleasure and honor for me to be here with you today. I am only going to take 5 minutes or less and probably not that.

Mr. MEEDS. Evidently you operate under the rules of the House. The rules of the House limit it to 5 minutes.

Dr. DICKEY. Yes. Due to the fact I was unable to prepare a prepared statement for you, I will submit one after these hearings.

Mr. MEEDS. Without objection, it will be entered at this point in the record.

[The statement of Dr. Myron Dickey was not received by the subcommittee when these hearings were printed. If received at a later date it will be placed in the file.]

Dr. DICKEY. I am neither an Indian expert nor an expert Indian although I am part Cherokee. My major qualification for being on this witness list is that I am greatly concerned about how much this bill can help the Indian people in this country. So If I can give you the benefit of our experience in Utah State University in Indian programs, and thereby help the bill, I think my trip to Washington will be worthwhile.

I believe very deeply that what the individual Indian needs today more than anything else is economic independence. More than a good education, more than a good health situation, more than good food, he needs the first independence that comes from earning his bread by the sweat of his brow and living off the dole may feed the body but it kills the spirit. Therefore I am concerned about the content of this bill S. 1017, at least the title 2 portion of it.

Under title 2 it is stressed only toward general education particularly high school. Now our experience in Utah State University is that there is a major effort needed to provide Indians with a business education and not just an education. Now the bill doesn't exclude a business education but it doesn't specifically provide for it either.

Therefore, we would like to recommend very highly that the language of the bill be written so that business education be required, Mr. Chairman.

Now this need is not just an opinion of myself or others.

One of our doctorial students last year conducted a Students For NITC, which is the National Indian Training Center in Brigham City, Utah. And this survey included 312 respondents from 72 tribes all over the country. And these included 42 respondents from non-tribal groups.

The study asked them to name their most urgent training needs and the top three—and I can't take time to go through them all—but the top three I would like to list.

No. 1. was supervision and leadership skills.

No. 2, was personnel management, and then this was tied with also community organization.

No. 3. was principles of management supervision.

Of course there were many others, Mr. Chairman, but these three were the major most urgently needed as stated by the Indians themselves and these were all in the area of business training.

Now in addition the NITC conducts seminars around the country and has planned in 1974 for a number of seminars; 53 have been requested by Indian Tribes and of those 34 are specifically on business topics.

So what I am saying is I guess in summary that the Indian people are clearly expressing their need for business education and those training skills and leadership skills that come under business training.

Now in many places around the country Indian businesses are springing up. A few of these are successful. Many of them are mediocre and a great many of them, Mr. Chairman, are failures. So I feel that this training in this area of business skills is badly needed and I feel, and we feel that, as far as I know, there is no comprehensive coordinated program where broad resources can be applied to the process of upgrading the professional development of Indian businessmen.

Therefore, I feel it needs to be in this bill and at least we would like to recommend that the language of the bill be such that business training with leadership skills that the Indian people are requesting and needing be included as part of the language.

Thank you.

Mr. MEEDS. Thank you, Dr. Dickey. I assume that your great great grandmother was a Cherokee Indian princess or was it on the grandfather's side?

Mr. DICKEY. My grandmother.

Mr. MEEDS. When you say that this should be mandated, where in the bill do you suggest we put it in?

Dr. DICKEY. In title II. I left my copy back in my briefcase, but I wonder if there shouldn't be a section in there about that or at least where it states about "education" if an amendment couldn't be placed in stating "business education." This would provide for it. I am just not skilled in the art of legislation.

Mr. MEEDS. Perhaps it may require a new subsection B or C?

Dr. DICKEY. Right. A new subsection.

Mr. MEEDS. Well, I don't think there is any question but that business education, that midlevel management and business education are badly needed in the Indian community and they are certainly the first to ask for it.

However, I have some apprehension about dictating it. You know, we say we are trying to get away from paternalism, from saying that Indians must do this or that. I just have some apprehension that if we get too specific we might be reversing what we are trying to do.

Dr. DICKEY. Well, I wouldn't think so, no more than just specifying "education" in there.

Would it be more specific to say "business education"?

I am not sure that is too paternalistic. But my feat is that, since it is not called for in there, it might not be able to be funded under the writing of the bill.

Mr. MEEDS. Well, I don't think there would be any question about that. I don't think there is any question that if the programs are adopted under Johnson-O'Malley, under the Indian Education Act or other acts pertaining to Indians, and you give control to a local school board to adopt a program and they adopt business education programs——

Dr. DICKEY. Mr. Chairman, my only fear is for instance, I look at the NITC at Brigham City, Utah. They have a very small program but a very great need. In fact it is our feeling that BIA is going to completely chop off the National Indian Training Center at Brigham City, which eliminates one of the major business sources that Indians have today.

Mr. MEEDS. Where is it being funded?

Dr. DICKEY. It is funded jointly by the Civil Service Commission and BIA but under which specific office I don't know.

Mr. MEEDS. Counsel says it is BIA. Anyway, we will have to look into that.

Dr. DICKEY. They have as many onsite training programs as well as seminars as they can.

Mr. MEEDS. Well, very good.

The gentleman from Ohio.

Mr. REGULA. I have no questions.

Mr. MEEDS. Thank you.

The subcommittee will adjourn for the day, to reconvene at 9:45 tomorrow.

[Whereupon, the subcommittee adjourned, to reconvene at 9:45 the following day, Tuesday, May 21, 1974.]

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

TUESDAY, MAY 21, 1974

House of Representatives,
Indian Affairs Subcommittee of the
Committee on Interior and Insular Affairs,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2358, Rayburn House Office Building, the Honorable Lloyd Meeds (chairman) presiding.

Mr. Meeds. The House Indian Affairs Subcommittee of the Interior and Insular Affairs Committee is in session for taking testimony and evidence on S. 1017 and related bills.

The first witness of the morning will be S. Bobo Dean who is representing the Association on American Indian Affairs.

Mr. Dean, we are delighted to have you with us and please come forward. If you have a prepared statement, you may read it into the record or we will insert it into the record and you may summarize your statement, whichever you wish.

Mr. Dean. It is a fairly short statement, sir, and I think I will read it.

STATEMENT OF S. BOBO DEAN OF THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS

I am pleased to respond to the committee's invitation by submitting the following statement on behalf of the Association on American Indian Affairs in support of the enactment of S. 1017. My remarks will be addressed to title I of the bill, which the association considers to be one of the most far reaching Indian legislative proposals to be considered by the Congress in recent years.

Since 1970 the association has furnished legal and other technical assistance to a substantial number of Indian and Alaska Native organizations which have been attempting to realize the promise of genuine Indian self-government, of an end to paternalism without the termination of Federal assistance or tribal sovereignty, which was held out in the President's message on Indian affairs in July of that year.

The organizations with which we have been most involved in this effort are the Miccosukee Tribe of Indians of Florida, the Navajo Tribe, the Ramah Navajo School Board, the Rock Point Navajo School Board, the Oneida Tribe of Wisconsin, the Sac and Fox Tribe, the Southern Cheyenne Tribe, the Duckwater Shoshone Tribe, and a number of Alaska Native regional organizations including the Tanana

Chiefs Conference, the Cook Inlet Native Association, the North Slope Borough, and Yupiktak Bista, Inc.

My comments on the need for this legislation are based on the association's experience in trying to assist these Indian and Alaska Native organizations in contracting for the operation of Federal programs. While there have been a few notable accomplishments since 1970, such as the contracting of the Miccosukee program and the innovative bilingual educational programs at Rock Point, Ramah, and other contract schools, there has been far too little progress in responding to the requests of tribal organizations for contract programs. We have concluded that in considerable part this has been due to a lack of understanding of, or sympathy with, the policy of Indian self-determination among some BIA personnel. We have also found a widespread view that the Congress does not support the administration's policy of allowing those tribes which wish to do so to contract for the operation of BIA programs.

Based on our experience in assisting tribal organizations in this area, we are convinced that the enactment of this bill would give the kind of firm congressional mandate which has been lacking and would assist the Commissioner of Indian Affairs in his effort to assure that tribal organizations seeking to contract BIA programs are able to move forward in a timely and orderly fashion in accordance with their aspirations. In considering the bill, I would be grateful if you would keep in mind the following specific points:

1. Title I of S. 1017 should be passed because, if it does nothing else, it puts the Congress on record in favor of giving Indian tribes the direction of Federal programs for their benefit when they wish it. In the absence of such a declaration, we are convinced that some Bureau officials will continue the line that self-determination is not really Federal policy.

2. By providing a hearing procedure in section 102 when there is a secreterial decision not to contract, the bill gives a weapon to tribal organizations to use against officials who fail to follow the thrust of administration and congressional policy. I know of a tribal organization which has been waiting since 1971 for a response from the BIA to a contracting proposal and has, in effect, been told only that the Bureau simply does not have sufficient staff to address itself to the proposal.

It will, of coure, be essential for the implementation of S. 1017 that the Bureau, itself, be appropriately restructured to handle the increased load of contracting which it will encourage. I urge that the committee's report include language instructing the Bureau to restructure its staff so that the bill can be effectively implemented.

3. S. 1017 addresses another major impediment to contracting which we have encountered in recent years by providing grants for technical assistance to tribes. Even if the BIA is adequately staffed to process contracts, there are functions in the negotiating process which it would be improper for Federal employees to perform, such as advising the tribe in the course of contract negotiations. Most tribes, however, lack the resources to obtain this kind of technical assistance.

4. The bill attempts to simplify the contracting procedures and to waive certain requirements which are appropriate in typical Federal procurements but are not necessarily the kind of regulations best

adapted to encourage the development of self-government in Indian communities.

The Bureau's new model contract which was sent to the field for use in contracting with tribes on May 7 contains 40 sections covering 51 pages of complex boilerplate provisions, the inclusion of which are apparently required by Federal laws and regulations applicable to all Federal procurements.

Some of these provisions are, of course, perfectly innocuous, such as the bar on the use of convict labor. Others are unnecessarily complex, such as the equal opportunity clause which is included in one place and waived in another by virtue of the Indian exemption under the 1964 Civil Rights Act. Still other provisions, such as the advance payment clause, are genuinely burdensome and unworkable.

What is needed here is to give the appropriate Secretaries the authority to draft regulations to carry out the purposes of this act without being bound by the requirements of the Federal Procurement Regulations. There does not seem to be any valid reason to insist that the standard procurement requirements applicable to purchases of goods and services must necessarily apply to contracts under S. 1017.

By a simple amendment, which is set forth at the end of this statement each Secretary could be given the authority to determine just what the most appropriate regulations for carrying out the purposes of this bill would be. I should point out that the Senate report states on page 15 that:

> Section 106 would exempt tribal contracts from Federal Procurement regulations which have served as obstacles to such contracting in the past.

In fact, however, section 106 does not do this, as is made clear in the section-by-section analysis on page 21 of the report.

Many of the procurement regulations are tailored for arms-length transactions in a competitive marketplace (see for example, attachment 2 of this statement), rather than for a relationship of assistance and support, which should certainly be the relationship between the Federal Government and the Indian tribes.

Of course, the Secretaries could include, subject to review by the House and Senate committees as required by section 107(b)(2) of the bill, any typical procurement regulation which is really appropriate to the congressional purpose as expressed in this bill.

5. The association supports the inclusion of authority for multiyear contracting as provided in section 106(e) of the bill. This may help to cut down the amount of time which tribal organizations have to devote just to negotiating with Federal officials. It may also help to give a tribe some assurance that the terms of a contract will not be repeatedly overhauled because of changes in the posture or composition of the Federal bureaucracy. A tribe should certainly be entitled to ask that, when it undertakes a contract program, the rules of the game should be set for a period longer than 1 year.

6. Finally, Mr. Chairman, I request that the report should include language indicating that pending tribal contracting proposals should be processed promptly under existing Bureau guidelines during the period that regulations under S. 1017 are being implemented. The effect of the enactment of S. 1017 should be to encourage prompt and responsive treatment of tribal proposals. There need not be, and should

not be, a year following the enactment of this legislation during which nothing is done in contracting except to draft regulations.

In addition to the association's interest in the contracting aspects of the bill, we also support the bill because it would enable an Indian tribe to contract for child welfare programs for its children. This would enable tribes to deal effectively with the disturbing problem of child welfare abuses with which the association has become increasingly concerned. We assume from the language of the bill that it would enable a tribe to contract for child welfare services for its children either on or off the reservation.

I appreciate the opportunity of expressing these views on behalf of the Association on American Indian Affairs.

ATTACHMENT 1—AMENDMENT OF S. 1017 TO AUTHORIZE WAIVER OF PROCUREMENT REGULATIONS

At the end of section 106(a) delete "." and insert "and that the appropriate Secretary may, in his discretion, waive any provision of the regulations issued pursuant to the provisions of the Act of June 30, 1949 (63 Stat. 378), 40 U.S.C. 471 et seq. which he finds to be inconsistent with the purposes of this Act."

ATTACHMENT 2

SUBPART 1–1.3—GENERAL POLICIES

§ 1-1.301 Methods of procurement.

§ 1-1.301-1 Competition.

All purchases and contracts, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent.

§ 1-1.301-2 Formal advertising.

Contracts for property and services shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. Procurement by formal advertising shall be in accordance with detailed requirements and procedures set forth in Part 2 of this chapter.

§ 1-1.301-3 Negotiation.

If the use of formal advertising is not feasible and practicable, purchases and contracts for property and services may be negotiated in accordance with the detailed requirements and procedures set forth in Part 3 of this chapter.

§ 1-1.302 Procurement sources.

§ 1-1.302-1 General.

(a) Before taking procurement action, in accordance with this chapter, agencies shall have complied with applicable laws and regulations relative to obtaining supplies or services from Government sources and from contracts of other Government agencies. These include excess and surplus stocks in the hands of any Government agency, Federal Supply Schedules, General Services Administration Stores Stock, Federal Supply Service Consolidated Purchase Programs, Federal Prison Industries, Inc., and National Industries for the Blind.

(b) Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "proposals" in the case of procurement by negotiation) shall be solicited from all such qualified sources as are deemed necessary by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned.

Mr. MEEDS. Thank you, Mr. Dean.

We really have somewhat of a paradox here, don't we? You point out, and I think justifiably so, that this bill calls for arms length transactions between possibly disinterested parties in the marketplace and ordinary contractual relationships.

You further point out that this might impose some undue burdens and impediments on the kind of relationship between a trustee and trustor, which we would envision. Isn't that the point at which we arrive at some anachronism? Indian people are asking for more authority to run their own affairs, but at the same time they are asking for a relationship which would be just a little less than that.

I am not saying that I agree or disagree with that; it just appears to me that that is the case.

Would you like to comment?

Mr. DEAN. Yes, sir. I think that the way I would respond to that is that there are certain functions that are performed by the Bureau of Indian Affairs pursuant to the Federal trusteeship functions with respect to the Indian trust lands, for example, and if those functions could not be appropriately turned over to an Indian tribe to perform, the tribe could not exercise the Bureau's authority to review its decision to lease its own lands, but the kinds of programs, however, which can be contracted such as the operation of a school are not essentially trust responsibilities.

The Congress has determined or is determined to provide certain assistance and services to Indians in the field of education and social services of child welfare and a variety of programs and that it would be perfectly appropriate for the Congress to make a determination that Indian communities again administer those kinds of programs, at best themselves.

Now the problem that is carried forward on that idea presently is that the Bureau is doing that, where it is doing that within the context of the Federal contracting laws and regulations which were developed to control the purchase by Federal agencies of goods and services for the use of the Federal Government, they were not developed with the idea of trying to encourage Indian tribes on Indian communities to operate their own schools or their own social services program.

Mr. MEEDS. Well, that is just the point I am trying to make. Were not these rules and regulations with regard to contractual relationships by the Federal Government and other parties really drafted to protect the taxpayers? I don't use this in the sense that I want to make a big argument about it, but wasn't the real basis protection of the Federal dollar.

Isn't that really the reason for devising contractual relationships?

Mr. DEAN. I think that rather the Federal procurement regulations generally were developed with exactly that purpose in mind, to get for, to buy for the Federal Government the services which it needed in a competitive marketplace without giving any undue advantage to any particular contract.

Mr. MEEDS. Correct.

Mr. DEAN. Now the unique feature, for example, of a proposed contract between the United States and the Oglala Tribe for the operation of a law and order program is that there is no contractor with whom the United States can appropriately deal, other than the elected tribal government, that the relationship there is more the relationship between say the law enforcement assistance administration when it provides funds to a local government to assist it in performing a local governmental function of that government.

And it seems to me that it is that discrepancy which the existing legal structure, out of which arises the problem in the existing approach that we have, the Bureau of Indian Affairs is trying to use to implement this policy.

All that my recommended language would do would be to charge the Secretary of the Interior and Secretary of Health, Education, and Welfare with the responsibility of reviewing these regulations and if he found that here is a procurement regulation which we need and which we should apply in a contract between the United States and the Oglala Sioux, he could use it, but he would not have to go to the General Services Administration to get a waiver because this is a Federal procurement regulation that applies across the board.

The substance of your questions, I would think that the Interior Department should address and deal with in each instance because those regulations are contractual requirements which would protect and assure that expenditure of funds would be the best under those circumstances and should be retained.

Mr. MEEDS. So in those situations where that can be done and more responsibility given to the tribes, that should be done.

Mr. DEAN. That is right.

Mr. MEEDS. It should be a Secretarial discretion, is that what you are saying?

Mr. DEAN. That is right.

Mr. MEEDS. I was struck, indeed bridled, at the provisions in here for insurance by Indian tribes and for performance bonds by Indian tribes. When we give a block grant at the Federal level to the State of Washington for vocational education, we certainly do not require a performance bond or insurance to see that they carry it out.

We set out some guidelines, we give them the money and if they do not carry out the guidelines, we withdraw the money or withhold it from the next grant which would be due them. Why should Indian tribes be treated differently, why should they be required to put up insurance to assure that the purposes of the contractual relationship would be carried out?

Mr. DEAN. I think that I would best answer that by saying that ideally it seems to me that there should be a grant program to accomplish the objectives of title I of S. 1017.

The association has testified previously in favor of a grant program. The association sent to the Congress a bill establishing a grant program, and the safeguards which would then be built into that program would be the kinds of safeguards that have been developed in other programs where the Federal Government is making grants for local city governments or county governments, and should treat Indian tribes exactly the same way.

Mr. MEEDS. For their grants.

Mr. DEAN. That is correct. Now there has been, however, a strong feeling, I think, in the administration and also in Congress that we should not move too rapidly toward a grant program for Indian tribes, and S. 1017 as I understand it, is an effort which moves in that direction but does not move all the way.

My response to your question would be that I believe from our experience, the association's experience, that it would be desirable to move more rapidly toward the same kind of grant relationship between the Federal Government and the Indian tribes as is in existence between many programs between the Federal Government and States and other non-Indian governments.

The idea that Indian tribes; it is better for us to contract with Indian tribes because we are buying a product that we can therefore exercise more control over the tribe, is, in a sense, a perpetuation of a paternalistic attitude.

Mr. Meeds. It is, but there is a distinction between grants and contracts. Is it your feeling that in contracts, for example, the Federal Government, in effect, is contracting its responsibility and needs to assure the public and the recipients that that responsibility will be carried out? Should there be insurance or some kind of performance bond which meets that responsibility?

Mr. Dean. It would be my understanding that that is the approach that the contracts lawyers would take.

Mr. Meeds. And that is not the same concept as for grants?

Mr. Dean. It may or may not be. As I understand it, there is greater flexibility with the grant program, but in fact, the Congress could establish a grant program and impose on it the same requirements, but when you begin to devise a grant program, you start addressing these questions and decide what requirements should apply whereas if you establish a contract program, you automatically make the Federal Property Act and its regulations meet it.

Mr. Meeds. I think that is all I have.

The gentleman from Ohio.

Mr. Regula. Mr. Chairman, thank you.

Mr. Dean, would it be your opinion that the BIA is not responsive in meeting the education programs and that you think if it were done by contract it would be a much better program?

Mr. Dean. I think that the basic issue so far as education is concerned is that in the past, the Federal Indian schools have had the prime responsibility for administering Federal Indian schools. That has been in the hands of Federal officials appointed in Washington, and the principal, the administrator, the area director to whom he reports; their chain of command goes back to Washington.

And in those schools that are now being operated by tribes, the Miccosukee School, the Ramah School, Rock Point, et cetera, the responsibility goes to an elected school board in the community and while the Federal Government is providing the funds and has established reasonable—and in some instances, I think more than reasonable controls over the use of those funds—the staff is responsible to a school board of parents who can fire the staff and to me that is going to lead not only as it already has in the schools to an increased quality of education but it is also more consistent with the democratic principles on which our country is supposed to function.

Mr. Regula. What definitive evidence do you have that this led to increased quality?

Mr. Dean. We have a letter to the Miccosukee Tribe from a BIA official. I don't recall now his name or title, but I can furnish the letter to the committee, which indicates that based on his review of the Miccosukee School, that is one of the best schools in the Federal Indian school system, and one in which he would be proud to send his own children.

I also have orally, although not in writing, a similar statement about the Rock Point School.

Mr. Regula. Were they poor schools before they were put out on a contract basis?

Mr. Dean. I think that I would not want to characterize them as a poor school, but I think I could provide evidence that the quality of education, and particularly in the Miccosukee School had improved and that there had been significant changes as a consequence of contracting.

Mr. Regula. I am correct that you are really saying Federal management is poor.

Mr. Dean. I think I would be prepared to say that Federal management in many instances is not as good as it could be, but I don't know that I am qualified to reach that kind of a judgment.

I would prefer to say that in the schools that I am familiar with, I feel that there is evidence of a significant improvement and I expect that kind of an improvement because I think when you give some authority to the people who are being served, that you are liable to get or likely to get an improvement in quality of the program.

Mr. Regula. Do you have any idea of how many of the people in BIA who are directly responsible for education programs are Indians?

Mr. Dean. I do not.

Mr. Regula. Would you say that it is a substantial number?

Mr. Dean. I know that the present acting director of educational programs is of Indian descent and there are a significant number of other persons with whom I am acquainted, but I don't have the exact figure.

Mr. Regula. Have there been any reports that you are aware of on the success of contracting versus the present way of doing it?

Mr. Dean. I know that there has been a study conducted by the Department of Contracts, a comprehensive study of the contract schools, but I have not seen a report of that so that I am not well informed as to that.

Mr. Regula. I would assume that what you are saying is that most of the major tribes have adequately trained people or individuals within their tribal structure who would be capable of handling this management responsibility in their school system?

Mr. Dean. Not necessarily. I think that that is the case with some tribes and I think one of the valuable provisions of S. 1017 is the provision for grants to tribes, to assist them. If the Secretary finds that they do not have the capability, he can make the grant to them to develop it. I think that there is a wide variation.

There is no question with some tribes that they have the capability fully. There are others, the Miccosukee Tribe which I use for an example because I am most familiar with them, the average educational level in the tribe in the middle 1960's was the second grade. The tribal chairman has never had any formal education, but they had the wisdom and the capacity to recognize the need and they employed some staff members who were not Indians and there certainly has been no criticism by the Bureau or anyone else familiar with their operation, with its success.

Mr. REGULA. Staff members in terms of teachers, principals, and that sort of thing?

Mr. DEAN. That is correct, and also other staff people in other programs besides education.

Mr. REGULA. But these would be part of the faculty, if you will, of the school and if I understand your item on page 4, you are really talking about the support for assistance.

Mr. DEAN. No. For example, an accountant, one of the most immediate problems that an Indian organization has, if it takes over either a school or any other program, particularly under the existing law, is how are we going to comply with the requirements for recordkeeping, reporting and so on which are suddenly being imposed on us as a Federal contractor, and there are tribes that have within their membership that kind of accounting or bookkeeping skill.

There are other tribes which do not and they would certainly be well advised to employ people who are qualified to do the work and the Miccosukee Tribe has in fact done that. They look to the time when their own people will be fully qualified to handle all of these responsibilities.

Mr. REGULA. What you are really saying, then, is that you would not trust the BIA people to provide this kind of assistance, but you would trust any consultant that they would hire on a contract basis?

Mr. DEAN. A consultant or an employee and the reason for that is that the responsibility runs to the elected leadership of the tribe itself whereas the Bureau—well, I do not mean any of what I have said as a blanket criticism of the Bureau because I have found very dedicated public servants in the Bureau of Indian Affairs and in many instances they provided to tribes exactly the kind of counsel and guidance and assistance as needed—but the man from the Bureau comes from Washington, comes from the area office or agency and his paycheck is coming from another source, so that it seems to me that it would inevitably happen, usually, that his primary concern will be to satisfy his employer and that the advantage in local control comes when the Indian tribe is able to employ the staff that it needs to do the job and if the job is done unsatisfactorily to the tribe, the tribe can then dismiss a man and hire someone who can do a better job.

Mr. REGULA. Well, I think we are differentiating. We are talking about staff which is one function, but if I understand your statement correctly, you are also talking about outside consultants who would not be staff but who would come in and of course, for a number of dollars would develop a plan and handle the negotiations which might well be an attorney.

Mr. DEAN. That is true.

Mr. REGULA. And the proposal would be that the Federal Government ought to pick up that cost in addition to the cost of hiring a staff; therefore it would be an ongoing function?

Mr. DEAN. I think with specific reference to the question of attorneys, that if an Indian tribe organization proposes to negotiate a contract to the Federal Government, that it is extremely important that the tribe have legal advice as well as other technical assistance from people who are responsible to it, and it would not be possible for the attorneys of the Federal Government to advise the tribe in the course of the negotiations.

It would not be appropriate for them to do so. For that reason, in addition to staff, there are other personnel including attorneys and perhaps other consultants, educational consultants in developing an educational program which the tribe might want to employ, and if the tribe itself does not have the financial resources to employ those people, then S. 1017 would give the Secretary the authority to make a grant to them to assist them in doing that.

Mr. REGULA. Doesn't your organization, the Association of American Indian Affairs, provide this kind of help?

Mr. DEAN. We do within the limits of the resources that we have and I have identified some of the tribes that we have assisted but I frankly do not feel that the kind of assistance that is available to Indian tribes generally in that area is sufficient.

Mr. REGULA. Who pays the bill right now for yourself and other staff people in your group?

Mr. DEAN. The association has essentially, I think, two sources of funding for this. Prior to about last March, the project was financed from the association's general, entirely from the associations' general fundraising. In other words, the resources that the association received from the general public.

From last March until sometime in January, the association did provide this kind of assistance under a contract with the Bureau of Indian Affairs. The funding for that contract was exhausted in about February and the assistance which we have been providing since then has been, again, under the association's receipts from the general public.

Mr. REGULA. That is all I have.

Mr. MEEDS. The gentleman from the Virgin Islands.

Mr. DELUGO. I have no questions.

Mr. MEEDS. Thank you, very much.

Mr. DEAN. Thank you.

Mr. MEEDS. Our next witness is Mr. Lawrence Snake, a member of the Board of Directors of the National Tribal Chairmen's Association and Chairman of the NTCA Education Committee.

STATEMENT OF LAWRENCE SNAKE, REPRESENTING THE NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION: ACCOMPANIED BY BANNING TAYLOR, SPOKESMAN FOR THE LOS COYOTES BAND OF MISSION INDIANS, MEMBER OF THE EDUCATION COMMITTEE AND THE SACRAMENTO AREA REPRESENTATIVE ON THE NTCA BOARD AND LANDELIN JAMES, VICE CHAIRMAN OF THE SWINOMISH TRIBE OF WASHINGTON STATE

Mr. MEEDS. I think you are accompanied by some people?

Mr. SNAKE. Yes.

Mr. MEEDS. Would you like to introduce them?

Mr. SNAKE. Yes.

Mr. Chairman and members of the committee, my name is Lawrence Snake. I am a Delaware Indian and a member of the Board of Directors of the National Tribal Chairmen's Association. I am chairman of the NCTA Education Committee and accompanying me are banning Taylor, spokesman for the Los Coyotes Band of Mission Indians, member of the education committee and the Sacramento area representative on the NTCA Board. To my left here is Mr. Landelin James, vice chairman of the Swinomish Tribe of Washington State.

Mr. Meeds. Let me interrupt you right there. Mr. Snake. I don't know that Mr. James is the best witness to bring here.

Mr. Snake. I think he is the best.

Mr. Meeds. Well, I don't know. I think maybe I would have a little grudge against him. He used to play basketball in LaConnor which is not a very big town and I used to play Monroe at Washington which is also not a very big town, but Mr. James played on the LaConnor team and I played on the Monroe team and Mr. James was almost singlehandedly responsible for beating my team, but I don't know, I might have a chance to get back at him finally.

Mr. James. Too bad we are not on the same team.

Mr. Meeds. We have been on the same team for a long time.

Mr. Snake. I want to add that Mr. James is also an educator in the State of Washington.

Mr. Meeds. I know that. I am well acquainted with Mr. James.

Mr. Snake. The National Tribal Chairmen's Association is much concerned in the disposition of S. 1017. We appreciate this opportunity to present our views on S. 1017.

NTCA would like to take this opportunity to commend you in your efforts to provide for the improvements of educational services for federally connected Indian children. Your sincerity in responding to Indian testimony presented in hearings by Indians on various Indian education bills introduced during the last few years is evident.

You have captured a good feel for Indian hopes and aspirations from previous testimony and have incorporated these into the proposed legislation. We support many of these elements.

At this point, I wish to depart from the text and inform the committee that we have studied proposals on legislation and history and testimonies including the Department of Interior's, even to the point of making some observations of yesterday's presentation by the Commissioner; hence to make our presentation somewhat brief, we will make some references to previous testimony.

The NTCA membership includes elected or appointed chairmen of all Indian reservations and federally recognized Indian tribes. It is pledged to establish unity among our succeeding generations, and to serve as the official voice of Indian leaders.

We are dedicated to establish conditions under which justice and respect for treaty rights and other laws can be maintained; to promote and encourage the preservation of our cultures and traditions; and finally to promote social, educational, economic and political progress among our Indian people.

S. 1017 contains two titles. The first seeks to add more realistic dimension to the present promise of self-determination for the Indian people that will provide maximum control without diminishing trust rights and without the threat of termination. Title II of S. 1017 contains a number of new education programs and authorities for the Secretary of the Interior.

Title I. The amendments to title I of S. 1017 offered by the Interior Department appear to strengthen the bill in certain areas such as employee protection and accountability. However, the proposals are deficient in not providing authorization and funding for tribal evaluation of programs and not making tribes eligible to obtain surplus Federal property which we will discuss later.

Title I recognizes the right of tribal governments to control and operate federally funded local governmental services. Further, it provides that the tribal government has the responsibility of deciding what is to be contracted, when it is to be contracted, and with whom it is to be contracted.

The Interior Department recommendations include no provisions for tribal evaluation of federally operated or federally contracted programs. Therefore, the findings of the Congress in section 2 and the grant authority as revised in the Interior proposal for section 104 should recognize the responsibility of the tribal governments to provide such evaluation.

In essence, NTCA believes that, No. 1, tribal governments are in the best position to know the needs of its constituents and should therefore have the responsibility of evaluating the needs and the performance in meeting those needs, and No. 2, it should be the responsibility of the U.S. Government to provide programs and adequate forward funding to meet these needs. Forward funding is mentioned here in order that adequate resources will be available to the tribes at the beginning of the program year rather than awaiting the normal appropriation processes.

The tribal governments should have responsibility to evaluate the adequacy and quality of programs and the U.S. Government should provide sufficient funds to tribes to perform this function.

Section 106–e provides for the Secretary of the Interior or HEW to permit tribes to use personal property owned by the Federal Government. However, it should be noted that tribal governments are not authorized to obtain surplus Federal property as are other local governments. We propose tribal governments be treated equally with State and local governments in this area.

In this connection, we would like to submit for the record the position paper of the National Tribal Chairmen's Association, which is titled "American Indian World" dated February 1974. This position paper emphasizes the concept that tribal governments should be considered as being equal to other local governments.

Title II, part B, preparation of professionals in Indian education, should be moved to title I and broadened to include professional areas other than just education, with specific emphasis on areas of development and preservation of Indian-owned natural resources necessary for the survival of Indian society. The NTCA makes this recommendation because the Indian-owned natural resources provide the basis for the historic and traditional relationship between the federally recognized Indian tribes and the U.S. Government.

The Indian-owned natural resources are therefore the most important possession and succeeding generations of Indians should be encouraged to become skilled professionals in the field of natural resources as well as in the social sciences. NTCA supports title I, the Indian Self Determination Act, and recommends that this title be enacted with modifications we are suggesting.

As was mentioned in our testimony on S. 3157, in the 92d Congress, NTCA has strong feeling about the trust responsibility for Indian lands which is the link that holds Indians and the Federal Government in a special and unique relationship. We feel that Federal actions which affect Indians should recognize and support tribal self-government to the fullest extent.

The proposed title, as we understand it, will neither surrender nor absolve the U.S. Government of its responsibilities to the Indian people. It seems to provide the statutory authority that is required to assist Indians in the implementation of a more realistic Indian self-determination policy. For these reasons, we support the enactment of title I as being critical to the continued well being of the federally recognized Indians which NTCA represents.

Title II. NTCA urges favorable consideration for the version of part A in Senate Committee Print No. 1, dated March 7, 1974, which provides more detailed provisions and controls on the use of Johnson-O'Malley funds.

The Interior Department testimony and report on parts B through F should not be construed to mean that there are no unmet needs in those areas. What the Department seems to be saying is that the problem is lack of money and not the lack of authority.

However, NTCA believes that those parts would provide congressional guidelines as to more appropriate levels of funding for those programs. We refer you to the position paper of NTCA which has already been submitted for the record, page 4, last paragraph, which states "That Congress should not provide funds for programs at an adequate level to meet Indian needs which are well documented and already on file."

NTCA concurs in the view that part G, section 218, financial assistance authorization for former private schools taken over by tribes should be discretionary and not mandatory. The needs of Bureau, public and tribal schools should be considered equally rather than one category being given preference regardless of circumstances that may be different in individual situations.

We note that section 4-a defines Indian to mean a person who is a member of a federally recognized tribe. We recommend that it be modified to include a person who is eligible for membership in such tribes.

We would be pleased to try to answer any questions.

Mr. Meeds. Thank you, very much, Mr. Snake.

Unfortunately, I think there are so many diverse requirements for tribal membership in the United States that your last suggestion would pose some problems. Let's talk about it for a moment.

Your last suggestion would deny some people, for instance, some Yakima Indians who do not reside on a reservation, tribal status because as I remember, membership in the tribe requires residing on a reservation.

Mr. Snake. I am from Oklahoma, sir, and we are set up a little different.

Mr. MEEDS. Well, but you see, we have to legislate for Washington State and Oklahoma and Nevada and North Dakota and other places and we have to get some kind of a description which will not exclude substantial numbers of people. We are looking for some kind of description because we feel that the present description is not delineated well enough to include a lot of urban Indians.

I really appreciate your situation on the evaluation and reporting. I think there is no question that the evaluation and reporting procedure ought to be in the bill and it ought to be done by the tribes themselves. The review would be helpful to us in Congress in determining the effectiveness of the general program and to the tribes so they can see what they are doing wrong.

Mr. JAMES. Possibly, it would be a stimulus for the BIA and tribes to work together.

Mr. MEEDS. Now you make one other sugestion, which is a good one I think, but perhaps is outside the jurisdiction of this committee with regard to surplus property.

I favor this suggestion. In fact, I have legislation before the Government Operations Committee with regard to surplus lands, and I think that should be enlarged to include surplus property, but again unfortunately, it is in the jurisdiction of another committee of this Congress. This body has not seen fit to change its rules so as to be a little more flexible on things like that, so in the absence of that kind of change, I think we will be unable to act on your specific request about surplus property.

The gentleman from the Virgin Islands.

Mr. DELUGO. Mr. Snake, I want to commend you on your presentation. It was very good and I join with the chairman in saying that your suggestion of evaluation of these programs by the Indian tribes is one that I certainly will support.

Yesterday, when Mr. Charles Trimble appeared before the committee, he raised the point that I would like to put to you Mr. Snake or Mr. Taylor or Mr. James, one or all can comment on it. He said we have noted the absence of any provisions for any statewide Indian committees as proposed in the original version of the bill, and the function of such committee would be very important, particularly in the development of professionals and educational research and development, both of which will take place undoubtedly in colleges and universities which are generally remote from Indian access and in such remote settings, these institutions often take unlimited license with what they think is good for the Indian people.

Would you care to comment on that?

Mr. SNAKE. I would like Mr. James to comment on that.

Mr. JAMES. The question that you are asking is do you think we need another committee to police what is going on?

Mr. DELUGO. Do you need a statewide Indian committee to review these programs that are outlined in parts B and E to see that they reflect the wish of the tribe, the Indian people?

Mr. JAMES. I think it is very important for the State and the community to work together. In the State of Washington we have a social-welfare program and I think that is going to be brought forward, in which we are trying to get together and organize through that the needs of the children. That is our ballgame and my thinking would be that anywhere you are dealing with children, you are going to have input from parents and I think we already have the organization where the State can govern this through the tribal councils or the individual organizations within each locality, but I feel that this has to come to the parents into the evaluation program and this will evolve—and if we can get the parents in there—so that they can feedback into the directors of these programs and that they will listen to them, then our program will go on and benefit will come directly to the child.

I guess what I am saying is I am not fully in favor of having another national committee that covers this. I am looking for it to grow out of the local organization and then feedback through the evaluation programs, and into a two-way street in the programs that are in existence.

I don't know if I have answered your question.

Mr. DeLugo. Well, I think that substantially you and Mr. Trimble are in agreement. He is not proposing another national organization. He is proposing statewide Indian committees which would, in effect, do what Mr. Snake proposed.

My impression from your testimony this morning, your statements and also the statements of Mr. Dean who preceded you and Mr. Trimble. Mr. Dean says, for instance, in his statement that he endorses the promise of genuine Indian self-government, of an end to paternalism without the termination of Federal assistance or tribal sovereignty.

The thread that runs through all of the testimony here is that you endorse anything that will strengthen the input of the Indian people in determining the function of these programs and that they actually reflect your wishes. Would that be correct?

Mr. James. Yes. The only thing that I would keep in mind is that anytime that there is legislation, it has to get back to that child because that is where it has to come from. I think a lot of times the money is not there, and it is hard to develop a program with all the money taken off the top and then you get what is left, and the child is the only one that suffers.

Mr. DeLugo. Thank you, very much.

Mr. Meeds. Thank you very much Mr. Snake, Mr. James, and Mr. Taylor.

Mr. Snake. Thank you.

Mr. Taylor. Thank you.

Mr. James. Thank you.

Mr. Meeds. Our next witness is Mr. Lionel R. Bordeaux, president of the Sinte Gleska Community College and American Indian Higher Education Consortium in Rosebud, S. Dak.

Mr. Bordeaux, I see you have a very lengthy statement here. Would you mind if we insert it in the record and you can summarize your statement?

Mr. Bordeaux. Yes, sir.

Mr. Meeds. All right. Without objection, the prepared statement will be made a part of the record.

[The material referred to follows:]

STATEMENT OF LIONEL R. BORDEAUX

Mr. Chairman, distinguished Committee members, ladies and gentlemen. My name is Lionel R. Bordeaux, and I am President of Sinte Gleska Community College and the American Indian Higher Education Consortium, hereafter referred to as the Consortium. The Consortium requested to make a statement before your Committee on behalf of our member institutions. We want to recommend the attachment of an amendment addressing itself to Indian-controlled community colleges.

Indian educational needs today are critical and the solution must be both innovative and "high risk" if the job is to be done. In no other ethnic minority group is there less literacy, more poverty, unemployment and undereducation and yet more genuine desire to assume responsibility of their own destiny than in the Indian community. To get the momentum directed correctly it is crucial that the tribal community needs and priorities be established. That the youth and adults be informed and that they be offered the opportunity of learning first hand those skills most important to fulfillment of their own and tribal goals.

In the past, Indian education policies have been imposed and undertaken by non-Indian administrators and educators with the assumption that the Indian was incapable of decision making and that one approach was adequate for all Indians. The disastrous result of these policies is that the average grade level achievement of the American Indian is five years; the drop-out rate of American Indian students in their first year of college is seventy-four (74) percent; that only three (3) percent of those enrolled will complete college; that only one of one hundred (100) college graduates will receive a masters degree; and that Indians are under-represented in college, in proportion to their population, by six hundred and fifty (650) percent.

To combat these educational tragedies several Indian tribes have instituted their own Indian Community Colleges. These institutions of post-secondary education have the following unique characteristics:

1. They are located on reservations.
2. The Board of Regents or Directors are comprised entirely of Indians.
3. They have a majority of American Indian administrators and faculties.
4. They have almost totally Indian student bodies.
5. Their curricula is interwoven with cultural components or cognizant thereof.
6. They are at liberty to be more innovative both in course content and methodology of instruction for more pertinent community learning.

These colleges are tribally chartered institutions of higher learning and were founded upon the philosophy of Indian control and determination of their own destiny. The founding persons desired to see their people given the opportunity to continue their education in an environment which would most likely lead to positive achievement.

Physically, these colleges operate on a "Dispersed Learning" approach. This is necessary due to the size of the reservations they serve and the lack of tranportation. This means that classes must be "dispersed" or taken to the communities. The advantage of this type of a model are:

1. A system that utilizes local community facilities and brings education directly into communities.
2. The need for only a small central administrative and faculty facility.
3. Use of local qualified and credentialed persons to teach courses. The majority of courses can be taught by part-time faculty paid per course taught, thereby eliminating the need for a costly full-time teaching staff.

We feel this type of a model is viable and can be extremely effective. It also serves as an example to other Indian reservations as a worthy tribal venture in the realm of Indian education.

On July 8, 1970, President Nixon officially proclaimed the Indian self-determination policy. Indian tribes and organizations have since been attempting to create and develop their own educational opportunities. Indian parents, educators, and tribal leaders are clamoring for recognition and involvement in the education that affects the lives of their children. They feel that they have relinquished this responsibility for too long. They point to the underachievement and ethnic alienation of their children under the present educational system. Traditionally, education has been viewed as the cornerstone upon which a community builds.

Unfortunately, the education of the Indian has always been devoid of this community involvement, and recognition. Educational programs which affects the lives of Indian children rarely are conceived, planned, operated or controlled by Indians.

Financially, the majority of these colleges are dependent upon the Bureau of Indian Affairs for their core budget. Therefore they attempt to seek funds from other sources to supplement the BIA budget. Unfortunately, this type of fragmented financial funding does not allow for proper planning or program stability and continuity. These colleges receive no state funds for operation or any type of local tax support.

The amount of funds requested from the BIA and other funding sources by these colleges have never been fully granted. In spite of this the colleges have continually received requests from their constitutency as well as various service agencies to expand services. In conjunction with the increased student enrollment, demands for more comprehensive student services and support have been voiced. More classes must be offered to meet the continuing education degree requirements of both full- and part-time students and adults as they progress toward the completion of their respective AA degrees.

These colleges have been able to make limited progress in developing curricula, materials and methods that truly meet the needs of the tribal members. However, the colleges are quickly approaching an academic development crisis. Their limited financing has not allowed sufficient staff to invest the time, energy and talent necessary to thoroughly adopt courses to Indian needs and goals. In addition, the Colleges staff have had to assume increased administrative duties along with their teaching responsibilities. This has not allowed sufficient time to adequately prepare course content and outlines, counsel students, and keep current with their respective professional areas. These neglected areas are necessary for meaningful instruction and the development of an additional base for the growth and permanency of a developing institution of higher learning. Consequently, staff has often had to rely upon delivering conventional education on the reservation and not always of the nature and quality the Indian people must have.

This bill addresses itself to many important aspects of Indian Education. Unfortunately, it overlooks the final phase of creating and providing a full and total spectrum of educational services for American Indians. This is the failure of the bill to address itself to these institutions of a post-secondary nature located in Indian communities and operated by Indian people.

These higher educational institutions provide a much needed service to those Indian people who will never utilize nor be accepted by the conventional institutions of higher learning. Statistics reveal that these off-reservation institutions are unable to provide a positive learning environment for Indian students and certainly provide almost nothing for Indian adults except an occasional token program which reaps the sponsoring institution a substantial indirect cost fee. Whereby in comparison these reservation-based institutions can provide or develop the following:

(1) The provision of an alternate system of education.

(a) Allows local people to plan, operate and basically be involved in their own educational process.

1. Close proximity to home.
2. Raise educational level of Indian people.
3. Provides career ladder for those presently engaged in paraprofessional positions in non-Indian educational operations to obtain credentials.
4. Allows a second chance for the previous drop-out or actually a first chance for those same students as well as others who view post-secondary education as only for the rich or brilliant student.
5. Allows students to look toward the academic area instead of only toward the voc-tech area as traditionally known.
6. Prepares local people for initial or employment advancement.

(2) The provision of a model for rural learning.

(a) Vehicle to provide not only academic courses but mini-courses or seminars in area of local need for betterment of skills or personal enrichment.

(b) Example of an educational vehicle to other parts of the state or region.

(3) Portrayal of Indian involvement and control as viable and effective.

(a) Instills pride of self-accomplishment in local people that if given the opportunity to perform and be involved in their own education they can succeed.

(b) Instills in youth the concept of higher education.

(c) Allows for the input of local resources in the design of local curriculum for the preservation, strengthening and promotion of local Indian culture.

(d) Validates term of Indian education.

(4) The provision of employment opportunity to educated reservation and off-reservation Indian.

(5) Creates awareness of educational and related issues and opportunities on part of tribal officials.

(6) Provide leadership in interpretation and direction of reservation issues.

(7) The provision of a non-political institution to allow for more program funding and subsequent program continuity and stability as viewed and required by funding sources.

(8) Training center for future Indian leaders.

(9) Facilitates and coordinator of activities among reservation and state service agencies.

(10) Resource to other institutions of all academic levels.

(a) Teacher training.

(b) Curriculum development.—

(c) On-campus clubs.

(d) Local school involvement.

It is through this type of educational vehicle that tribes can be provided the opportunity to enhance their own learning and operating ability in their overall endeavors to achieve self-determination.

However, at a time when these institutions should be expanding they are being told that without specific legislation they will be forced to cease operation at the end of fiscal year 1975. Immediately affected are the centers located Rosebud and Pine Ridge Indian Reservations, namely Sinte Gleska College and Lakota Community College. Other colleges in initial stages of development are those located at Standing Rock Sioux Reservation and Turtle Mountain Indian Reservation located in North Dakota, and a joint venture by the Winnebago, Omaha and Santee Sioux in northeast Nebraska. These latter named college centers do not receive Bureau of Indian Affairs funding.

If allowed to operate these colleges will complement and complete the spectrum of education services presently being provided Indian people. The cost of operating these schools will be substantially lower than those federally operated schools of post-secondary education such as Haskell Junior College (Lawrence, Kansas) and Southwest Polytechnical Institute (Albuquerque, New Mexico) and American Institute of Indian Arts (Santa Fe, New Mexico), and other federally funded institutions such as Federal City College in Washington, D.C., Howard University and Eisenhower College, the latter a private institution which was issued grants not to exceed $5,000,000 by Public Law 90-5 of the 90th Congress, H.R. 19831, approved November 12, 1968.

AMENDMENT

The following is the amendment which we want attached to Senate version 1017 as it pertains to Indian-controlled community colleges. This version was adopted by the Board of Directors meeting of the American Indian Higher Education Consortium on March 8, 1974.

Part (a).—The Secretary of the Interior is authorized and directed upon the request of any Indian tribe or tribal organization to provide funds to any such tribe or tribal organization to assist in the development, operation and maintenance of comprehensive Indian-controlled community colleges to provide post-secondary education in Indian communities, and to insure that the education provided by such college is suited to the needs, interests and potential benefits of such communities.

Part (b).—There are hereby authorized to be appropriated for the purposes of part (a) an annual sum for the development, operation and maintenance of such colleges that does not exceed the average amount of the present cash contributions made by the Federal government for the education of American Indian students at the federally operated institutions of the same type.

Due to the lateness of introducing this amendment, complete legislative rationale has not been developed and delivered at this time. However, the concern and urgency of initiating legislation on behalf of Indian community colleges, as a most important vehicle through which the attainment of Indian self-determination can be realized, is highly recommended.

In closing, it has been an honor to appear before you today. On behalf of the Rosebud Sioux Tribe, Sinte Gleska Community College and the American Indian Higher Education Consortium, I would like to extend our deepest appreciation for your continued interest in Indian activities and for your support of our institutions and other Indian-controlled institutions in their pursuit to validate the concept of Indian self-determination.

RESOLUTION No. RB 74-56

Whereas, The authority as stated in the Snyder Act of 1921 and the Johnson-O'Malley Act of 1934, as amended in 1936, mandates the United States Government to provide educational services to American Indians; and

Whereas, The President of the United States has stated it is the official policy of the government to promote and foster Indian self-determination in all areas of endeavor; and

Whereas, The Congress of the United States has recognized the need for Indian people to be responsible for their own educational institutions by enactment of the Indian Education Act of 1972; and

Whereas, If these policies are to be effectively implemented, Indian control of their own educational institutions is an absolute necessity; and

Whereas, The education of Indian People has for too long been in the hands of non-Indians; and

Whereas, On January 23, 1971 the Rosebud Sioux Tribal Council officially chartered and established an institute of higher learning on the Rosebud Sioux Indian Reservation; and

Whereas, This institution, Sinte Gleska College Center, is governed by Indian persons who live in and are aware of the needs of their communities and are committed to the preservation and development of Indianness; and

Whereas, Legislation needs to be developed to assist Indian communities in the development of their own destiny in post-secondary education in Indian communities and reservations; therefore, be it

Resolved, That Title II of Senate Bill 1017 should be revised and amended to include specific legislation in behalf of the development, operation and support of Indian controlled community colleges such as Sinte Gleska College located on the Rosebud Sioux Indian Reservation; be it

Resolved further, That this amendment should read as follows, "The Secretary of the Interior is authorized and directed upon the request of any tribe or tribal organization to provide funds to any such tribe or tribal organization to assist in the development, operation and maintenance of comprehensive community colleges to provide post-secondary education in Indian communities and to insure that the education provided by such college is suited to the needs, interests and potential benefits of such communities; and, be it

Resolved further, That the following formula method be included, "That there are hereby authorized to be appropriated for the purposes of the above mentioned an annual sum for the development, operation and maintenance of such colleges that does not exceed the average amount of the present cash contributions made by the federal government for the education of American Indian Students at the federally operated institutions of the same type.

CERTIFICATION

This is to certify that the above Resolution No. RB 74-56 was duly passed by the Rosebud Sioux Tribal Council in session, March 25, 1974, by a vote of 26 in favor, none opposed and 4 excused. The said resolution was adopted pursuant to authority vested in the Council by provisions of paragraph (1) of Section 1 of Article IV of the Constitution. A quorum was present.

ROBERT BURNETTE,
President, Rosebud Sioux Tribe.
NORMAN L. KNOX,
Secretary, Rosebud Sioux Tribe.

Attest:

RESOLUTION No. 429-74

Whereas, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians having accepted the Indian Reorganization Act of June 18, 1934, and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council, and

Whereas, Indian Education has historically been in the hands of non-Indians with largely disastrous and inadequate results, and

Whereas, there is a recognized need for Indian control of those institutions concerning Indian welfare, as indicated by the Presidential policy of Indian self-determination and, specifically, responsibility for their own educational institutions as designated by the Indian Education Act of 1972, and

Whereas, there are presently institutions such as the Standing Rock Community College, and the other members of the American Indian Higher Education Consortium, which have undertaken community control of post-secondary higher education for the tribes they represent and under whom they are chartered, and

Whereas, these community controlled colleges are undertaking a challenge which other institutions have generally failed to meet, and are attempting to answer such community needs with funds and manpower greatly insufficient to the magnitude of the task, and

Whereas, special legislation is imperative to the further growth and enrichment of these unique institutions.

Now therefore be it resolved, that Title III of Senate Bill 1017 should be revised and amended to include specific legislation in behalf of the development, operation, and support of Indian controlled Community Colleges such as those united under the American Indian Higher Education Consortium.

Be it further resolved, that this amendment should read as follows; Part A. "The Secretary of Interior is authorized and directed upon the request of any Indian Tribe or Tribal Organization to assist in the development, operation, and maintenance of comprehensive Indian-controlled Community Colleges to provide post-secondary education in Indian communities, and to insure that the education provided by such college is suited to the needs, interests, and potential benefits of such communities."

Be it further resolved, that the following method be included, that Part B. "there are hereby authorized to be appropriated for the purposes of Part (a) an annual sum for the development, operation, and maintenance of such colleges that does not exceed the average amount of the present cash contributions made by the Federal Government for the education of American Indian students at the Federally-operated institutions of the same type.

Be it further resolved, that the Chairman and Secretary of the Tribal Council be authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of 15 members, of whom 13, constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened, and held on the 26th day of April, 1974, that the foregoing resolution was duly adopted by the affirmative vote of 9 members, with 0 opposing, and with 4 not voting. The Chairman's vote is not required except in case of a tie.

Dated this 26th day of April, 1974.

PAT MCLAUGHLIN,
(For Melvin White Eagle, Chairman,
Standing Rock Sioux Tribal Council).

Attest:

ALVINA GREYBEAR,
Secretary,
Standing Rock Sioux Tribal Council.

UNITED SIOUX TRIBES OF SOUTH DAKOTA,
DEVELOPMENT CORPORATION,
Pierre, S. Dak., May 8, 1974.

Hon. Congressman LLOYD MEEDS,
Cannon House Office Building,
Washington, D.C.

DEAR CONGRESSMAN MEEDS: It has come to our attention that the American Indian Higher Education Consortium is submitting an amendment to Senate Bill 1017. The specific legislation that they are requesting addresses itself to the request of financial support of Indian-controlled community colleges or college centers located on Indian reservations.

Presently, in South Dakota, we have two (2) such college centers who are members of the American Indian Higher Education Consortium and who are partially funded by the Bureau of Indian Affairs. These post-secondary institutions are Sinte Gleska College and Lakota Higher Education Center, located on the Rosebud and Pine Ridge Indian Reservation respectively. These institutions have been funded in the amount of $200,000 a piece for the past three years, but have been informed that funding will cease after the fiscal year 1975 due to non-existant legislation mandating the U.S. Government to be fiscally responsible for these institutions.

By a unanimous action of the United Sioux Tribal Chairmen at a duly called meeting on April 27, 1974, I have been requested to submit this letter supporting the requested legislative amendment on behalf of our own Indian-controlled community colleges.

We feel this type of education endeavor on the part of Indian tribes and communities attempting to establish and secure their own educational self-determination is what President Richard Nixon was addressing in his Indian Self-Determination speech of July 8, 1970.

We urge your strongest support on this matter. Any need for further support or discussion can be addressed to this organization.

We appreciate your assistance in this most important matter.

Sincerely yours,

CLARENCE W. SKYE,
Executive Director.

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION,
Washington, D.C. May 1, 1974.

Mr. LIONEL R. BORDEAUX,
Sinte Gleska College Center,
Rosebud, S. Dak.

To Whom It May Concern:

The National Advisory Council on Indian Education (NACIE) has gone on record many times in favor of promoting and fostering Indian self-determination in all areas of endeavor and in particular, Indian Education.

The Congress of the United States has recognized the need for Indian people to be responsible for their own educational institutions by enactment of the Indian Education Act of 1972.

The National Advisory Council on Indian Education has consistently supported such individual efforts as Sinte Gleska College Center, Rosebud, South Dakota. However; they do not do this to favor one Indian college, community or reservation over another.

I, Dwight A. Billedeaux, Executive Director of NACIE have taken my opinion from the official action of NACIE's committee and full council meetings, also from the first annual report to Congress of the United States, to endorse on behalf of NACIE, the Resolution of RB–74–56 and the concept of Rosebud's Sinte Gleska Community College Center.

Sincerely,

DWIGHT A. BILLEDEAUX,
Executive Director.

DEPARTMENT OF EDUCATION AND CULTURAL AFFAIRS,
DIVISION OF ELEMENTARY AND SECONDARY EDUCATION,
Pierre, S. Dak., May 20, 1974.

To Whom It May Concern:

Sinte Gleska Community College meets a real need for Indian people. It is indeed a pleasure to see Indian leadership providing services for Indian people. I only hope that the public and private system of higher education will lend an assist to this very important venture for Indian people.

I intend to do whatever I can to assist in the future growth and development of the community college system for Indian people.

Sincerely,

DON BARNHART,
State Superintendent of Public Instruction.

STATE OF SOUTH DAKOTA,
EXECUTIVE OFFICE,
Pierre, May 20, 1974.

Hon. LLOYD MEEDS,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. MEEDS: I am pleased to lend my support to S.B. 1017 currently pending before your Subcommittee on Indian Affairs.

We have watched with interest the development of such educational programs as the Sinte Gleska College at Rosebud, South Dakota. Where possible the State of South Dakota has cooperated with the development of the program and we are convinced that these higher education programs will be a significant factor in helping Indian people to do a better job in managing their own affairs and their own future.

The Bureau of Indian Affairs is to be congratulated for its support of the establishment of such programs as Sinte Gleska. However, I believe the continuation of Indian controlled higher education on a sound footing depends on specific Congressional authorization and funding of such programs. This would permit the development of the colleges through the use of long range planning which is not always possible without a firm authorization and funding source.

Sincerely,

RICHARD F. KNEIP, *Governor.*

Mr. MEEDS. Please proceed.

STATEMENT OF LIONEL R. BORDEAUX, PRESIDENT OF THE SINTE GLESKA COMMUNITY COLLEGE AND AMERICAN INDIAN HIGHER EDUCATION CORSORTIUM IN ROSEBUD, S. DAK.

Mr. BORDEAUX. Mr. Chairman, distinguished committee members, ladies and gentlemen, I am here on behalf of the American Indian Higher Education Consortium, and I appreciate the time that you have given us here to speak on behalf of the association and primarily we would like to address ourselves to, I think something here that S. 1017 has not addressed itself to and these are community colleges.

About 4 or 5 years ago in three or four communities people sat down at ad hoc committees and started taking a look at the high dropout rate of Indian students throughout the Nation. Policies, higher education, we felt that this was not relevant to Indian students and we saw in the freshman year, a dropout rate of something like three-fourths of the Indian students, that is 1 out of every 100 that were going on to a graduate degree, and so we started talking of the idea of the possibility of Indian control of community colleges and now today the American Indian Higher Educational Association has formed with membership of six Indian colleges.

These colleges are all located on Indian reservations. They are tribally charted organizations and they are operated or governed entirely by Indian people and their faculty staffs are comprised practically with Indian educators. Indian staff members and I guess our primary purpose here is to offer an alternate type of system of education for those particular groups of Indian people who never will venture off the reservation where a University of South Dakota or a Harvard is too far or only for the brilliant or for the rich and we felt that there is a need right at home for all educational levels to give a first chance to Indian students who, particularly in the age of 20 to 35 have young families or just not enough money.

These students can go off the reservation to go to school and probably the majority of you are familiar with Sinte Gleska Community College which has its own legislation. The crisis we are up against right now is that we were told this past spring that the BIA would fund no more Indian control community colleges unless they have their own legislation.

It was only through some people in the Interior Department that we got reinstated for fiscal year 1975 and now we are being told that at the end of fiscal year 1975 this community college at Pine Ridge and the other one, which are the two right now that are being funded, to the tune of $200,000 a year——

Mr. MEEDS. Is that total?

Mr. BORDEAUX. Yes.

Mr. MEEDS. For your school, for each school?

Mr. BORDEAUX. All we are receiving is $200,000 now.

Mr. MEEDS. From BIA?

Mr. BORDEAUX. For an educational grant. We do have some other contracts like education for $27,500, extension, $40,000 and in the past 2 years we have operated what they call an Indian-action team.

Mr. MEEDS. That is what?

Mr. BORDEAUX. An Indian-action team.

Mr. MEEDS. Do you want to tell me about that a little bit?

Mr. BORDEAUX. This here is primarily, the eligibility is the same as the 959 program, Public Law 959, which has a 2-year eligibility and so we have now, we are now into our 21st month of operation and that money will run out as of next year or as of September.

But primarily what this money here does is it allows, it provides for training for carpentry, heavy equipment, various trades, this type of thing and right now we have 48 who are in on this training program.

Mr. MEEDS. Kind of an MDTA program?

Mr. BORDEAUX. Yes, almost identical to that. But I guess the summary is, you know, that we need legislation, specifically on our behalf so that we can sit down and actually start running the college the way it is supposed to be run, start developing long-range planning, start bringing in consultants ourselves, to bring in master plans, and sit down and try to develop phase 1, phase 2, and phase 3.

But we have to scrape every year for $200,000 and try to get foundations here to supplement our budget, so it just does not allow us the time to be able to develop an institution of higher education the way it should be, as meaningful as I know these schools can be because they are so flexible and there are many things that they can do in the area, not only the provision of academic courses in the AA area—we have six, seven associate of arts degrees and we have nursing programs and as I mentioned, we have heavy equipment, we have carpentry training programs, but there are just a multitude of things that could be done there in the area, such as many enrichment courses for the elderly, for the tribal people themselves, management seminars; this whole thing that we feel the Indian colleges can contribute.

Mr. Meeds. What is you total budget at Sinte Gleska Community College?

Mr. Bordeaux. This year we have about $1.3 million.

Mr. Meeds. $200,000 of which is coming from the BIA?

Mr. Bordeaux. Well, in addition to the $371,000 and the $27,500 plus $50,000 and then the rest from the Office of Education.

Mr. Meeds. Do you have any idea of what the Navajo Community College budget is?

Mr. Bordeaux. Their budget, I believe, is $2.5 million.

Mr. Meeds. How much are they receiving, do you know, from BIA?

Mr. Bordeaux. They get, I believe they get $1.5 million plus their supplemental of another, I think, $2 million.

Mr. Meeds. For fiscal year 1975?

Mr. Bordeaux. 1974, 1975. They have about a $2½ or $3 million operation, not counting construction. When they finally complete their construction, it will have been a $5 million construction.

Mr. Meeds. Now, are you getting any funds from HEW, through the Higher Education Act for Developing Institutions or anything like that?

Mr. Bordeaux. On title III, we get $100,000.

Mr. Meeds. On title III?

Mr. Bordeaux. Right.

Mr. Meeds. That is developing institutions?

Mr. Bordeaux. Right. This year I think we will get $112,000.

Mr. Meeds. Any other Federal funds?

Mr. Bordeaux. From EPTA, we get another $100,000.

Mr. Meeds. What are you doing with your EPTA funds?

Mr. Bordeaux. Right now we are operating on six other Indian reservations for paraprofessional teacher training. What we found is that there are 60-some people that we have identified over the past years in institutions and various colleges that have come onto the reservations, all with the idea of training our teacher aides, and so you take a student there and you take a look at his transcript—he's got 3 years at the University of South Dakota and he's got 6 hours from Harvard, he's got *x* amount of hours and he may have 30 or 40 hours from about 12 or 50 different schools and yet he is in no way close to any type of degree because no college will accept the other one.

Mr. Meeds. What is your full-time equivalency student population?

Mr. Bordeaux. Let's see, we have 153 full time.

Mr. Meeds. What is a realistic figure of the funding in the proposals you are making for community colleges?

Mr. Bordeaux. I would say it would need to start in phases, and I would say initially, well they run the gamut because some are farther ahead of the others.

You take an institution like Turtle Mountain; they receive $100,000 and they have 106 students attending and their director also teaches four classes.

Now with them, I would say realistically they would probably go, say, with a half million, just to try to operate with what they have right there.

We have now been in operation, we are in our fourth year and easily for operation and to come up with some buildings—I am not talking campus, we operate in disbursed learning centers so we take the higher instructors in the various communities, and we take education out to these communities, so we really don't have a need for a large, central campus such as Navajo does, but we do need the buildings, like relocatable trailer houses that we can set up someplace and also set these buildings up as multipurpose centers through the community, so I would say we need about a million, million and a half.

Mr. Meeds. Would you say, if we were to start a program somewhere in the area of $3 million, that it would be relatively sufficient to start with?

Mr. Bordeaux. I would say probably $4 million.

Mr. Meeds. What kinds of guidelines would you think would be necessary for us to draw to assure that the money was not wasted and it was properly utilized in developing community colleges on reservations?

Mr. Bordeaux. Well, I——

Mr. Meeds. Maybe you would like some time for this. Could I prevail upon you to give that some thought and write to me, write to the subcommittee and indicate that you think would be some guidelines for that?

Could you do that?

Mr. Bordeaux. Very good, all right.

Mr. Meeds. So without objection, that will be made a part of the record, then, at the end of your testimony.

Well, Mr. Bordeaux, let me compliment you on your testimony and your expertise. I have recognized, as have some other Members of the Congress, that we should do something in the field of community colleges on reservations for a long time, and we have been engaged in kind of a rear-action battle with BIA and others to see that you do get some funding for your schools. But all this is kind of too little and too late and too unplanned, so we might have to put something in this bill which would be a little more specific and that is why I am asking for your written comment.

I appreciate, very much, your testimony, sir.

Mr. Bordeaux. Thank you.

Mr. Meeds. Our next witness is Mr. Dwight A. Billedeaux, executive director of the National Advisory Council on Indian Education. Please come forward, sir.

STATEMENT BY DWIGHT A. BILLEDEAUX, EXECUTIVE DIRECTOR OF THE NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION; ACCOMPANIED BY CLARENCE SKYE AND DORRANCE STEELE

Mr. Billedeaux. I would like to bring a member of our council who is with me and also a member of my staff.

Mr. Meeds. We would be delighted, yes.

Mr. Billedeaux. One is a member of the council and Mr. Skye is with my staff.

Mr. **Meeds.** Please proceed, Mr. Billedeaux.

Mr. **Billedeaux.** Mr. Chairman and members of the committee, my name is Dwight A. Billedeaux, executive director of the National Advisory Council on Indian Education. On behalf of the officers and members of NACIE, I express gratitude for this opportunity to testify on legislation promoting Indian self-determination and education assistance.

The National Advisory Council on Indian Education is committed to self-determination and Indian educational reform.

NACIE has never taken an opposing position to title I of the Indian Self-Determination Act. Therefore, they adhere to the authorization of Bureau of Indian Affairs and the Indian Health Service to contract with Indian tribes for the operation of Federal programs on the reservations which would implement the administrations of Indian self-determination.

NACIE cannot agree to any formula that may be added until such formula is thoroughly studied and tested before being implemented.

There is a study being made by HEW and the BIA. It was requested by the House Interior Appropriations Committee. The study is in relation to title IV, part A, of the Indian Education Act, other OE funding, and Johnson-O'Malley. Although the study is to be completed by September of 1974, the implementation of the study has caused HEW to assume there is duplication and therefore not request funding for part A.

As NACIE monitors this study, we are very unhappy with some aspects of it. It is another study made about Indians, for Indians, but not with them.

The National Advisory Council on Indian Education recommends under the declaration of policy, section 3-A-1 adds the following thereby the Congress of the United States recognizes the National Advisory Council on Indian Education who is proportionally representative of all Indian people from Indian communities.

S. 1017 appears to predetermine the educational needs of Indian students and communities. This is a violation of the principle of self-determination.

Title I, the Indian Self-Determination Act, section 102.1, page 6, line 5, that the Secretary may initially decline to enter into any contract requested by Indian tribes if he finds that—and it lists a number of things—also under title II, part B, section C, the Secretary is authorized and directed to develop criteria pursuant to which he shall evaluate all grants and contracts authorized under this section.

It appears that title I of the Indian Self-Determination Act is really usurped by the decisions being given too often by the Secretary. Thus NACIE asked that where it is appropriate that the term and the National Advisory Council on Indian Education be placed with the Secretary's. If we are to be a National Advisory Council on Indian Education, then allow this to happen.

The National Advisory Council on Indian Education cannot in good faith to the Indians it represents, or as advisors to Congress, cannot endorse title II, the Indian Education Assistance Act until such a time the following changes are made.

The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had an approved educational plan, by the Secretary of the Interior and NACIE. Such plan shall include local parent advisory committees selected by Indian people who determine the educational objectives which adequately address the educational needs of Indian students who are to be beneficiaries of the contract and assures that the contractee has liaison with the NACIE and Secretary of the Interior in meeting the objectives.

Section 5(b), the Secretary of Interior and NACIE in their discretion.

Section 203(1)(A) add after: concerning the Indian process and consulting the NACIE and other Indian education bodies.

Section 204(a) After project to—with priorities to Indian controlled institutions and organizations such as NACIE.

Part C—School construction—Section 206(a) After or school districts, add with consent of local Indian parent committees or tribal government bodies.

Section 206(g)(3) After Indian reservations, add preference shall be given to Indian contractors that meet all standards for government contracting.

Part E—Education Research and Development—Section 211(a), after and demonstrations add with priorities given to Indian controlled Indian institutions.

Mr. MEEDS. I notice that you did not, at least in any specific way, refer to the portion which deals with the Johnson-O'Malley reform suggested in the bill.

What is your general position with regard to Johnson-O'Malley? What should this committee be doing about it, if anything?

Mr. BILLEDEAUX. Well, I will defer to the man to the right of me.

Mr. STEELE. Definitely, we are in support of the Johnson-O'Malley Act. We think it generally duplicates the services that the National Congress does.

There is one part under the Johnson-O'Malley Act which interests the tribes and that is the part where the tribes must form either a State corporation or a tribal corporation in order to contract, and I think this portion of S. 1017 and the contract partly takes care of that.

Mr. MEEDS. Is it your position that the contract authority in title I would extend to full contractual responsibility for Johnson-O'Malley?

Well, I just checked with counsel and his view is the same as mine, that title I just extends to noneducational functions.

Mr. STEELE. Well, then I think in the Johnson-O'Malley Act there needs to be a change; that tribes do not have to form a State corporation, either a tribal corporation or a contract. I think that ought to be in the bill, if it already is not.

Mr. MEEDS. Could I ask the National Advisory Council to submit to the subcommittee within 30 days your recommendations as to what Congress ought to do about Johnson-O'Malley?

Mr. STEELE. All right, and does that, Mr. Chairman, give us the opportunity to bring in expertise on Johnson-O'Malley?

Mr. MEEDS. You have absolute authority to do whatever you would have to do to respond as you wish to the question. No money of course, but a lot of authority. [General laughter.]

Mr. MEEDS. I ask that because it is my view and evidently very much your view too, that many of these parts of title II need to be looked at very closely and perhaps coordinated. I don't want to go rushing in at this time and picking up bits and pieces of an educational package, but it is rather clear that Johnson-O'Malley needs to be reformed.

And it may be that when we finish our work product here, the bill will consist only of the general contract authority provided in title I. We may have to leave the larger question of Johnson-O'Malley reform to future determination, perhaps by the Commission which we hope to create under Senate Joint Resolution 133. That would allow more time to study the specifics.

I tend to agree with one of the witnesses yesterday in talking about Sections B, C, D, E and F. I think the authority for the programs already exist; we just need more money. But in any event, we certainly would want to have your views on the reform of Johnson-O'Malley.

Thank you very much, gentlemen, for your testimony.

Mr. BILLEDEAUX. Thank you.

Mr. MEEDS. Our text witness is Mel Sampson and Bill Yallup of the Yakima Tribe. Welcome, gentlemen, to our committee.

STATEMENT OF BILL YALLUP AND MEL SAMPSON OF THE YAKIMA TRIBE

Mr. YALLUP. Before we start, Mr. Chairman, with our comments, we would like to comment that it is appropriate that the education committee council is taking some action toward the implementation of S. 1017.

I am chairman for the legislative committee and that is one of the reasons I am here and Mel also serves on the committee, so one of the reasons we are here is because we were the only two people available at this time to come to Washington and talk with the committee.

After I complete reading our statement, Mr. Sampson has some additional off-the-cuff, so to speak, remarks.

The Yakima Nation does recommend the passage of S. 1017 as amended by the U.S. Senate. The Yakima Nation has long been aware of the pressing need to develop its human resources through educational programs directed to the needs of its people. Partaking in the general educational programs provided by the State of Washington through local school districts has historically fallen far short of meeting the education needs of our people.

Far too often the public school faculty and administration lack any knowledge or appreciation of Indian customs and Indian ways. They lack an ability to respond to the needs and problems of the Indian student because they are without knowledge of the home environment in which the student is being reared.

As a result, we experience a statistically significant school dropout rate when compared to other cultural groups within local public school systems and much of the value of a good education is lost to our people.

But education needs exist for more than the school-age child. Preschool training, adult educational and vocational programs and special education for the gifted and the mentally disabled members of the tribe are all of great importance.

For many years the Yakima Nation has tried to respond to these needs. Among our most notable achievements is Camp Chapparal located on the wooded slopes of Mount Adams. The summer program responds to the needs of a great many of our youth.

It provides an exciting variety of educational experiences steeped in the native customs of the Yakima Indian people close to the water and trees, the soil and sky, upon which our people rely and from which they derive their strength in both physical and spiritual sustenance. Still, only a limited number of children can attend and grow through this program and that only for brief periods during summer months.

The Yakima Tribal Council Committee on Education is among the most vital and active groups on the council. Active cooperation with Central Washington State College has resulted in the development and implementation of the Center for the Study of Migrant and Indian Education. This has not only been of significance or direct benefit to the Indian children enrolled in the classes, but has also provided an opportunity for educating the educators in the Indian customs and ways.

Last year, the Consortium of Johnson-O'Malley Committee of Region IV, a nonprofit organization, was formed to involve more parents more directly with the planning and supervision of the expenditure of Johnson-O'Malley funds for the benefit of Yakima Indian children.

Adult training and education programs have called for substantial investments of time and money and have been wholeheartedly ported.

Still much needs to be done. Still the major educational programs remain dominated by persons whose total good will and cooperation does not overcome their lack of first-hand experience in the Indian culture. Old prejudices run deep and are not easily overcome, even among the more progressive elements of the society.

The proposals of S. 1017 address themselves to many of the needs which the concerned members of the Yakima Nation experience. Indian input at the planning and preplanning stages is made mandatory.

Specific recognition of the frequently encountered need for planning money has been anticipated. This will make it economically feasible to hire the professional expertise needed to plan and structure educational programs which will qualify for funding under other sections of the act.

Moneys for program evaluation are also made available so that meaningful analyses can be made of both traditional and innovative approaches to education, specifically as they affect the needs of the members of the Yakima Nation.

Moreover, the stress on the use of trained people with Indian cultural backgrounds will, we hope, serve to create job opportunities on our reservation. The so-called braindrain is of vital concern as so often our people can find no alternative job positions in areas for which they are highly trained and qualified.

They then leave their people to seek employment in the larger job markets of the nonIndian society. We see the emphasis on qualified and specialized jobs with priority for Indian applicants as a positive attraction to call our people home, especially those we have sacrificed to train and educate.

But primarily the overriding need to have people reared in the Indian culture actively engaged in the planning and implementation of education-related endeavors at all age levels and across the entire spectrum of education from preschool through adult, from academic through vocational has been incorporated into the act.

People conversent with the Indian culture are recognized as the Sine Qua Non of Indian education. For these reasons the Yakima Indian Nation recommends approval of S. 1017, its early passage by the Congress of the United States and its earliest possible implementation and integration into the educational structure of our people.

Mr. Meeds. Did you have something, Mr. Sampson.

Mr. Sampson. I have about four or five recommendations to make for the record. In part D, section 207 where they have an internship program, they have a limitation there of 16-year-olds as the minimum age to participate.

I would recommmend that that age be lowered and left open so we can give the child under 16 years of age an opportunity to participate in the internship program.

In section 209, part 3, I think the word tribe should be inserted in that, to be employed by nonprofit agency or tribe, and in section, part E on page 27, educational research and development. In section 211, part A, we recommend that the grants in the contracts be more specifically related to and then part F, the ability for early vocational educational forces, section 213, part 4, we recommend that the age factor be left open. Also, it presently stipulates 3 to 21 and I think the handicapped children are recognized prior to age 3.

On other reservations you have presently approved handicapped tribal members beyond the age of 21, so at least within the first year they should be included with the program, so it should be reduced down to 21 and we presently have a handicapped program on our reservation funded by the Bureau of the Handicapped, their office of education and we are treating handicapped children from 3 to 8, so this section there is most favorable if you reduce the age factor because we are in our third year, approaching our third year and we are presently seeking other sources of funds so this would fit right in with that.

Thank you.

Mr. Meeds. Thank you. Thank you both.

Mr. Yallup. Thank you.

Mr. Sampson. Thank you.

Mr. Meeds. First of all, I would like to offer my commendation on the Camp Chapparal program. As you both know, I have been involved in that, in the funding aspects and I am a stalwart supporter of it. I think it has been tremendously successful and it is a very fine program.

I would like to ask if either the Consortium or the Johnson-O'Malley Committee has been a successful experiment in making Johnson-O'Malley expenditures more responsive to the needs of Indian children?

Mr. Yallup. I think it has from the aspect that the committees are now more together. I think they have five committees which were not put together very well. A big problem I saw recently was that it did not have a director but I think they have one now.

Mr. MEEDS. The reason I ask was when I was in this State on Indian education hearings in 1971, on Johnson-O'Malley, I found a rather substantial departure from what I considered to be proper expenditures for Johnson-O'Malley funds and I was told that the expenditures were approved by an advisory committee.

Mr. YALLUP. I think they have two school districts on this advisory committee. It might be 10 people, but now I think that one of the better things that came out of this is that we pretty much know how the money is being expended.

I have been on one of the committees there for 4 years myself and the people there are pretty hard to work with.

Mr. MEEDS. Who did your funding for the Camp Chapparal program, mostly Labor Department?

Mr. YALLUP. Johnson-O'Malley in part.

Mr. MEEDS. Johnson-O'Malley was being used there?

Mr. YALLUP. Uh, huh.

Mr. MEEDS. And the tribe and you've gotten some funds from the Labor Department?

Mr. YALLUP. Yes, that is the Bureau of Services.

Mr. SAMPSON. Right.

Mr. MEEDS. Would you agree with me that for almost all of the things in title II, school construction, teacher training, summer leave programs and professional training and educational research and development authority in the BIA, HEW, or the Department of Labor already exists? We just need the money.

Mr. SAMPSON. Well, of course, when it gets down in our section, I think primarily what we hear is that we don't have it. That is usually the word that we hear.

Mr. MEEDS. Don't have what?

Mr. SAMPSON. The money. They say that we spend the money and they don't have the money.

Mr. MEEDS. Has your Johnson-O'Malley Advisory Committee drawn up any kinds of guidelines through which they are evaluating local Johnson-O'Malley programs?

Mr. YALLUP. Yes. As I understand it, they have guidelines to evaluate all of our programs. This is information that was being compiled last night because I got on the phone and as soon as some of these things came up, I called back and——

Mr. MEEDS. Well, Bill, could you submit that for the file, the guidelines of your consortium that have been adopted with regard to Johnson-O'Malley expenditures?

Mr. YALLUP. Yes.

Mr. MEEDS. Without objection, it will be made a part of the file.

Very well, gentlemen, thank you for your testimony. You can now get back to Yakima and help in the very vigorous efforts that are being made by that tribe in almost every segment.

Our last witness of these hearings is perhaps one of the most knowledgeable people in the entire field of Indian education, Helen Schierbeck. Please come forward.

It is my understanding that you have been down at the local slammer complaining about the gigantic ripoff of your apartment, is that correct?

Ms. SCHIERBECK. Yes. I am wondering if I should hold members of your staff accountable. [General laughter.]

Unfortunately, I do not have a completed statement. I have a partial statement.

Mr. MEEDS. You may proceed.

STATEMENT OF HELEN SCHIERBECK

Ms. SCHIERBECK. I would like to add some exhibits a little later concerning my testimony.

Basically, I feel that title I of S. 1017 is a long-needed piece of legislation. If you look at BIA, it is kind of interesting that people can always go back to the early 1800's if they have to, to justify doing something, so I feel that title I is needed so we can bring contract granting up to date, up to 1974 standards.

The only recommendation I would have to make on that title is that you add a section on training to complement management development and possibly add, at least, an appropriation of $1 million for both Secretaries to utilize or you may want to work with Labor to utilize some of the needed manpower training funds to do that job.

Most of my comments will relate to title II and I find myself in a very peculiar position this morning because I have been an advocate for this for many years and I feel that I have to, with great reservation, recommend against title II of this act. I have enumerated many reasons and also in my statement I am recommending a number of things to the subcommittee that you do to help us really get a handle on education of Indian children.

I would just like to make one side comment. It seems to me that over the last 4 or 5 years we have had the HEW Subcommittee prying into BIA education——

Mr. MEEDS. I am afraid I will have to plead guilty to that. [General laughter.]

Ms. SCHIERBECK. And in title II, I certainly feel that the school construction amendment needs to be kept, but I would recommend that you look at how HEW could streamline its authority and its mechanism for school construction fundings.

Mr. MEEDS. Under Public Law 815?

Ms. SCHIERBECK. Yes. I would also recommend that because we are caught currently in a crunch with the Indian community colleges developing on reservations—and I consider this one of the most significant things to have happened in Indian educational history—I believe these schools can help develop a trained manpower capital in the Indian community that can really take over a lot of Indian services.

Unfortunately, they have no authorized legislation and I do have an amendment drafted on that which I would like to submit for the record later.

Mr. MEEDS. I would like to say the witness is reading the chairman's mind.

Ms. SCHIERBECK. And I didn't have the benefit of hearing your questions this morning.

Particularly with regard to the other sections, I feel that they are really expanded program authorities that BIA already currently has, and consequently I believe that those programs could be expanded if they went to the Appropriations Committee and I am not against those programs; I just feel that with an important piece of legislation like this. I would like to see you turn your attention to other matters at BIA and then, of course, help us get the money out of appropriations to carry these programs out.

What are some of the things that I feel need to be done in the Bureau of Indian Affairs and HEW? I am very concerned that over the past 10 years we have had an educational budget that today is something like $420 million, supposedly benefiting the Indian child, and yet when we travel to an Indian community, Indian people and Indian children are not getting the benefit of that money.

I think we need to shred out any bureaucracy that is benefitting—I think the Commissioners have come up here and said to you and they certainly have said it to the Indian people, we are putting this money into the community—I do not believe that is true because I think we are putting the money out to Indian education, but it is not going to the tribe or is not going into the Indian community.

What I am suggesting is that we have to quit piecemealing legislation. There is really a need for taking a sharp look at Johnson-O'Malley, at this later act, if you will, at the Elementary School Act which is of this year and which is, again, piecemeal.

Also, we now have 2 years of experience under that and I think that we need to look at these pieces of legislation and we also need to add another element to this, and that is the growing interest in the Indian community in terms of running their own school systems.

Now I have been doing some research this year and I have found that although the administration has said things about Indian control, it does not really, clearly, state anything on that matter, so I would recommend that we hold title II in abeyance except for the two things I have commented on, and I would really like to get a promise out of the chairman that he would undertake to take a look at Indian education, look at the structure of Indian education here.

We are asking a person to run our school system and to hire a staff and we are saying we are going to hold him accountable and then he has no authority to do this. That makes it virtually impossible to define policy and to define objectives and to implement that.

A person has got to be a super persuader, you know, not just with the Indian people, the Indian community, but with the Congress and with the bureaucracy and that has been our thinking.

So I feel a structure needs to be paid attention to and we need to elevate that person so that they can truly take command of the educational system. I also think that Congress needs to address itself to the problems of a boarding school. Now the other subcommittee did talk about those, but nothing has been done to benefit those students. I happen to feel these boarding schools really need to be brought up to date and innovated programs updated in those schools and universities.

Someone has got to take not just a look, but to define some legislation to accommodate the needs of those schools. I feel that community control is extremely important because in this country, in education, as we have already said, people run the educational systems and yet Indian people are not doing that, but along with that view, we have to be able to tackle the question of finance.

How do we finance a school system for Indian people? Now I think there are some alternatives, but I do think there is going to, it is going to require that which the States can count on from Congress and I am not talking about—I am talking about total subsidy—and I am looking at that question currently.

I think if you look at all the programs we are funding and the money we see going to Indians, we would be able to support those school systems, I think, with quite a bit of supplemented money.

Let me just peep at my notes and see if there are some other things I want to say. I guess I also feel that this committee should say something in its later hearings as to the role of the Office of Education that has been the primary educator of children in public schools.

Three-fourths of Indian children are there and yet Indians have had a very difficult time impacting that system and then we would be able to see under title IV in another year, how committees are able to work with the public school system.

I am not optimistic about that because I feel we have not done an adequate job of training Indian people in terms of how to work with them within their systems and we have not done an adequate job of taking discretionary moneys that Congress has allotted and made sure that we have programs that can impact a public school system.

I think that pretty well wraps up my statement, Mr. Chairman. I will be happy to furnish whatever information the subcommittee desires or feels necessary.

Mr. MEEDS. Thank you very much, Helen, for your fine testimony. As usual, it was very enlightening. The subcommittee will now stand adjourned.

[Additional information for the record follows:]

RJ ASSOCIATES,
Arlington, Va., July 12, 1974.

Hon. LLOYD MEEDS,
Chairman, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, House Office Annex, Washington, D.C.

DEAR CHAIRMAN MEEDS: Enclosed is the statement of Peter MacDonald, Chairman of the Navajo Nation in support of Title I of the Indian Self-Determination Act, S. 1017. The statement is limited to Title I of the Bill since there has been more than ample testimony on Title II of the Bill and the Chairman felt that he would have little new to add on Title II at this time.

Our firm is under contract to the Office of the Chairman and has been designated by him to provide any follow-up support on behalf of the Bill. In that regard, please feel free to call on me.

Sincerely yours,

JEROME S. BERNSTEIN,
Vice President, Consultant to the Navajo Tribe.

Enclosure.

STATEMENT OF PETER MACDONALD, CHAIRMAN, NAVAJO NATION

It is significant that consideration of this important Bill falls on the fourth anniversary of the President's July 1970 speech which we at Navajo hoped was a dramatic turn away from the long history of repression and despair which has been the lot of the American Indian over the past two hundred years. Although many of us were skeptical, even the worst cynic within his heart hoped desperately that this time Washington was speaking with the sincerity and the conviction to see to it that lofty words would in fact become meaningful realities. Sorrowfully, although the words continue to pour forth, there has been little in the way of deeds to make self determination a meaningful reality.

In the case of Navajo, in many respects, the momentum has been in the other direction.

The very need for S. 1017 emanates from the inaction on the part of the BIA in implementing the policies contained in the President's 1970 speech. The Navajo Tribe fully supports Title I of S. 1017 as a crucial piece of legislation tion necessary for initiating the first steps in implementing self-determination. I submitted a detailed statement last June before the Senate in support of this legislation and strongly reendorse the Bill at this time. However, despite our strong support for this Bill, and although we have no objection to what the Bill says, we have many concerns about what the Bill does not say. These are stated below and we sincerely hope that these concerns and recommendations become incorporated in the final legislation, if not by amending the Bill, then through the Committee report which will serve as the guide to legislative intent.

The BIA, and this Bill, talk of self-determination only in terms of contracting program administration to tribes. In our view, this is an extremely narrow interpretation of the self-determination concept and totally disregards the fact that there are a number of other approaches to tribal self-determination. Our own view of self-determination for the Navajo Tribe would have the Tribe contract for planning, monitoring and evaluation functions. Inherent in the planning function would be the determination of program design and budget allocations. This would give the Navajo Tribe maximum control over what programs and services would be provided to the Tribe, would assure that they were appropriately designed to meet the specific needs of the Navajo people, and that they would become increasingly staffed by Navajos; they would be monitored to assure that the program administrator was following the plans approved by the Tribe and the Tribe would evaluate the programs to determine their effectiveness relative to Tribal goals, philosophies and priorities. However, only in specific instances where it was specifically determined that there is a special and long term benefit to be derived from substituting the Tribe as official program operator would we choose to contract for program administration. We have enough difficulty trying to get our BIA Area Office to be accountable to the Tribe; reversing the roles and placing the Tribe in the position of being accountable to the BIA Area Office, who would monitor our administration of "their" programs, would likely prove to be a worse nightmare. We want maximum control; but at the same time, we do not wish in any way to diminish the BIA's fiscal responsibilities to the Tribe. We believe that to put the BIA out of the program services business altogether through total contracting would in the end work against the principles of self-determination and the interests of the Navajo Tribe. It could lead to a kind of de facto termination.

Like it or not, the future protection of the Tribe's rightful program funds and services are inextricably tied up with the BIA, and therefore our Tribe's future in many ways is dependent upon the continuance of a "healthy" BIA. We recognize the need for the preservation of the BIA as the primary mechanism through which Indian tribes and individual Indians can obtain their entitlement which is their due through treaty rights and under law. Our issue is not whether the BIA should exist or not—we cannot survive without it—but how it functions and its ability to respond to tribal initiative. More often than not, the cry that self-determination will lead to termination because it threatens the existence of the BIA comes from elements within the BIA itself who are committed to the status quo. They holler "termination" whenever tribes advocate changing the status quo and whenever tribes attempt to exercise self-determination. This situation will not change until the BIA in Washington lays out a comprehensive plan for implementing self-determination—one which recognizes the changes which must come within the Bureau as well as within the tribes if self-determination is to become a reality, but at the same time one which provides for transition rather than upheaval. It is the absence of a clear definition and policy on self-determination and the absence of clear directives from Washington to the areas, which have resulted in chaos.

Rather than approaching self-determination from a negative stance where the tribes are put into the position of appearing to take power and resources from the BIA, particularly the area offices, the approach should be a positive one which redefines the role of the BIA in light of self-determination activities on the part of the tribes. There should be a comprehensive planning effort involving the tribes working jointly with the BIA in exploring self-determination options. There is no single approach to self-determination; such a notion would be a literal contradiction of the concept. A pluralistic approach is necessary wherein each tribe could explore the various alternative approaches open to it relative to its own unique needs. Different tribal models would evolve and each would be tailored to the needs of the given tribe. It should be expected too that self-determination approaches determined today would be changed over time commensurate with the growing knowledge and experience of each tribe in pursuing the course it has chosen. This type of flexibility is necessary if tribes are to be able to evolve their own forms of self-determination relative to their unique needs and desires based on knowledge and experience. In any case, with each change in tribal self-determination there is a resultant change in that tribe's relationship to the BIA. The tribes and the Bureau must travel the road to tribal self-determination together and the BIA must remain a viable and relevant agency if we are to assure that it does not ultimately lead to termination. To ignore the implications for change within the BIA is to set loose forces within the BIA which will work at cross-purposes to tribal self-determination and at the same time weaken the BIA itself. The BIA must take specific steps in consultation with the tribes, to redefine its role on a Bureau-wide, area by area, agency by agency basis and to make those redefined roles positive and constructive and complementary to the redefined roles of the tribes.

Although the tribes should be provided funds to purchase independent technical assistance services to assist them in identifying and exploring self-determination options, the development of new roles for the tribes must result in clearly defined positive roles for the BIA. There should be a positive personnel plan for the area offices. No one should have to live in perpetual fear of losing his job. Such a plan should provide for a scheduled and orderly transition over a five year period from non-Indian dominated area and agency offices, to those staffed with tribal recruits—this particularly in light of the recent U.S. Supreme Court ruling on Indian preference. Most area office jobs should be filled with tribal Indians through a process of natural attrition. Where appropriate, provisions should be made for transfer of incumbents to jobs of comparable grade and status including the cost of household moves, and early retirement where appropriate and desired without financial jeopardy. The BIA should fund programs to train tribal members for jobs within the BIA and establish career ladders for low level Indian employees and in-service training programs. Had these approaches been followed as a sincere effort to implement the principles expressed in the President's 1970 Indian message, area and agency offices would now be more staffed and influenced by tribal individuals, and self-determination would be much more of a reality.

Self-determination cannot be treated as another routine policy within the BIA if it is to be a successful policy. Unless the BIA gives prominence and priority attention to the development of specific self-determination policies and develops, in collective and individual consultation with the tribes, a long term program for implementing those policies, self-determination in the broad context will never get off the ground. Accordingly we recommend that a new office of an Assistant Commissioner for Self-Determination be established pursuant to enactment of this Bill. The Assistant Commissioner for Self-Determination would have as his sole responsibility the development of a plan for implementing the Commissioner's self-determination policies. The new office should be staffed with other personnel adequate to carry out the complicated job of defining the new policy, assuring adequate consultation with the tribes in the process and implementing the provisions of Section 104 of the Bill. There should be at least one individual detailed to each BIA area office (and its agencies) who would be responsible for working with each of the tribes in defining the policy as it would relate to that tribe. As plans become developed and implementation is begun, the role of these staff people would shift from developers of self-determination plans to ombudsmen to assure full and effective implementation of the plan and policies at all levels within the BIA structure and to recommend remedies to the myriad problems which will surely crop up along the way.

In the testimony I gave last year before the Senate on Title I of this Bill, I observed that a serious implementation of self-determination will cost *more* money during the initial phases. I still hold that view. The BIA cannot, on the one hand assert its commitment to self-determination and on the other refuse to provide the funds and resources which the tribes must have to implement it.

This would be hypocrisy. It would leave the tribes in the position of having to absorb these costs through diversion and/or reduction in program funds and services. This is fundamentally wrong and contrary to the intent and spirit of self-determination and Section 3 of the Bill; it places the tribes in the position of having to pay the cost of righting the wrongs perpetuated by the BIA over the past 150 years and heaps yet another indignity on Indian tribes.

We are pleased to note that Section 109 of the Bill provides an authorization of $1,000,000 for planning and evaluation and other activities *preparatory* to pursuing contracting or other self-determination options. However, the Bill does not recognize the need to cover the increased costs of contracting which will surely result during the initial years of tribal initiatives. The private sector as a matter of routine, budgets higher sums of money for what is called "tool up" and "try-out" periods when initiating new approaches and new products. Surely no one in the Congress would expect Indian tribes after 150 years of forced dependence to suddenly come forth with experienced administrators, established administrative mechanisms, sophisticated program systems, highly developed cost-accounting systems, and most importantly the wisdom and expertise that comes from experience alone and which is essential to operating a highly cost-beneficial operation. Tribal self-determination will cost more money during the initial three to five years of effort, and funds should be provided to cover those costs and not penalize the tribes.

The latest proposal for implementing self-determination put forth by the BIA is the reduction of area office personnel by up to ten percent to provide funds for covering the costs of tribal administration of programs. There are several deficiencies to this approach. A ten percent reduction in area office personnel will not provide nearly enough money to cover the additional costs of tribal implementation of self-determination. In addition, unless personnel slots are permanently left on the books as a budget item to obligate funds, the funds available through personnel reduction will soon become lost in the total BIA appropriation and will ultimately become lost to the tribes. At that point, the tribes will be absorbing the costs of program administration through reductions in program funds. Tribes will be blamed, not BIA in Washington, for putting area office personnel out of jobs and threatening the jobs of those still employed. This will tend to heighten bureaucratic resistance to implementation of self-determination and will result in increased sabotage of tribal efforts to pursue self-determination, particularly at the area office and agency levels. It is therefore essential that Section 110 of the Bill contain an unequivocal statement providing for a maintenance of effort based on FY 75 funding service levels. This would eliminate any question of penalizing tribes for pursuing self-determination.

Another issue of vital importance if self-determination is to be a meaningful policy for Indian tribes, is the control of the funds appropriated and allocated to meet the needs of Indian tribes and Indian people—otherwise known as the BIA budget. (Sometimes that budget is viewed by some bureaucrats as the BIA's own self-serving savings account rather than the government's commitment through treaty obligations and under law to meet the needs of Indian tribes and Indian people.) While we have been manipulated into quibbling over this or that individual program and who should run it, the BIA has had free rein with the budget. It is the development of the budget and the allocation of fiscal resources which in the long run, more than anything else, will determine the degree to which Indian tribes control their destiny. The bureaucrat who controls our destiny is the bureaucrat who decides that there will be an increase or decrease in funds available to educate our children, and who controls our employment assistance monies and determines whether or not there will be job training for our youth upon completion of high school or whether he will be forced to go to a border town or an urban area to seek training which he cannot find within his own tribe and perhaps be lost to the tribe forever. The formulation of the BIA budget more than anything else affects our lives. Yet, to focus on contracting alone, a consideration which occurs only *after* the budget has been determined, is to literally miss the forest for the trees in the context of self-determination.

On a piecemeal basis, it could take some tribes twenty years to "control" the impact of BIA funds on their lives. We, as well as BIA bureaucrats, sometimes seem to forget that those funds are appropriated for our needs, our people, our development. Any approach to self-determination which leaves the determination of budget priorities affecting individual tribes solely within the hands of the BIA without full participation by and consultation with the tribes makes a mockery of the words, "self-determination."

For years the BIA pressured Navajo to produce a balanced budget and to reduce the outlay of tribal funds. Yet it is the very refusal of the Area Office to cooperate with the Navajo Tribe in developing an integrated budget based on Tribal priorities which has resulted in two separate unrelated budgets, administrative duplication, program irrelevancies and large scale waste of funds on GIA-determined priorities which simply do not meet Tribal needs. The very insensitivity to Tribal needs of the BIA budget has resulted in increased appropriations of Tribal funds to meet those needs which the Area Office systematically disregards. Were our requests for full participation in the development of the budget even partially realized, Tribal expenditures would be significantly decreased. Not only is the BIA budget process a major contributing factor to increased Tribal expenditures, but the Tribe is at the same time made to suffer the indignity of constantly being reproofed for overspending.

We have taken note of the Comptroller General's recommendations with regard to S. 1017. We have no basic objections to the various points raised in his recommendations. We have also noted that there are strong recommendations pertaining to tribal accountability for contracted programs. And, we agree that tribes should be accountable for living up to the terms of fully negotiated contracts which they do sign. However, those recommendations and S. 1017 nowhere make any provisions for BIA accountability to Indian tribes. Nowhere is there mention of accountability mechanisms to assure full two-party negotiations between the tribes and the BIA on contracts or accountability of the BIA in providing the tribes with the support systems and technical assistance the tribes will need to effectively administer programs and carry out the provisions of their contracts with the BIA. Similarly there should be provisions for assuring BIA accountability to tribes in terms of the expenditure of BIA funds, including quarterly financial reports to Indian tribes detailing how funds have been spent; the BIA should be accountable to the tribes for reprogramming of budget funds and should not be permitted to reprogram funds without consultation with the tribes.

We believe that the overall intent and purposes of the legislation would be significantly enhaned if the law provided the Secretaries with authority to promulgate regulations to carry out the purposes of S. 1017 without being bound by the requirements of the Federal Procurement Regulations. Further, the purposes of the Act would be significantly enhanced if Section 105 of the Bill were to amend the Surplus Property Act to make all federally recognized Indian tribes fully and independently eligible for receipt of surplus property.

Lastly, construction activity would be affected by the provisions of S. 1017. The Bill should provide for preferential hiring of Indians on reservation construction projects. The U.S. Supreme Court has finally settled the constitutional question on preference in favor of Indians, and the serious employment problems on reservations require that preference be mandated wherever possible.

Provision should also be made for the payment of prevailing wages in conjunction with construction projects. However, we believe there should be some flexibility written into the Bill concerning wages. On the one hand, Indian workers have often been grossly underpaid on construction projects and we therefore favor a requirement that Davis-Bacon rates apply on construction subject to the provisions of this Act. On the other hand, the Davis-Bacon requirements have at times imposed a heavy burden on Indian development and at times have had a destructive net effect. For example, where a tribe is given a fixed amount of money to construct homes, a school, or other facilities, an inadequate budget and/or inflation has often put the tribes in a situation where the requirement to pay Davis-Bacon rates has resulted in a cut-back on construction and/or the construction of inadequate facilities. With a minimum amount of flexibility provided to the tribes in setting wage rates for construction workers, many of these problems could have been avoided. Therefore we support a general provision requiring Davis-Bacon rates, but with a provision permitting that rate to be lowered up to 25% where the Tribal Chairman and the Secretary deem such action as necessary to complete the given project with the funds allocated for it.

We strongly endorse Title I of the Indian Self-Determination Act as a potentially historic piece of legislation. We urge that the following considerations be given deliberate consideration in order to assure that the intent of this legislation is actually realized and request that they be incorporated into the legislation itself or the Committee Report.

1. A new Office of Assistant Commissioner for Self-Determination should be created. This Office would be responsible for developing and implementing jointly with tribal officials plans for effecting self-determination.

2. Tribes should be provided the necessary funds to obtain independent technical assistance needed in developing and implementing their plans.

3. The Bill should clearly recognize the probability that the initial costs of self-determination and tribal program administration pursuant to the contracting provisions of the Bill will be considerably higher than current costs of program operation; the Bill should provide an authorization to cover these additional costs, above and beyond planning costs, for a period of up to five years.

4. A joint Tribal BIA personnel plan should be developed in order to place tribal Indians in BIA offices; training of tribal Indians should be funded by BIA.

5. Tribes must have full participation in budget formulation if self-determination is to be fully realized.

6. In regards to the proposed 10% cut in BIA personnel to pay the overhead and administrative costs of self-detemination, these slots should remain on the BIA "books" in order that budgeted funds not be lost and Section 110 of the Bill should be amended to include an unequivocal maintenance of effort provision based on FY 75 funding levels.

7. Mechanisms for BIA accountability should be provided by the Bill for review of BIA decisions and to insure full two-party negotiations in contracting.

8. Quarterly fiscal reports to the tribes should be provided if the tribes are to be able to make up-to-date fiscal decisions.

9. The Secretaries of Interior and Health, Education and Welfare should be free of existing Federal Procurement Regulations in promulgating regulations pursuant to S. 1017.

10. The Bill should permit waiving of the provisions of the Davis-Bacon Act upon the joint agreement of the Secretaries and the Tribal Chairman for purposes of lowering wages by a maximum of 25% pursuant to construction contracts covered by the Bill.

11. Section 105 of the Bill should provide the tribes with full and independent authority to acquire Government surplus property.

Thank you.

PETER MACDONALD,
Chairman, Navajo Nation.

STATEMENT OF THE NATIONAL INDIAN YOUTH COUNCIL, ALBUQUERQUE, N. MEX.

Honorable Chairman, Members of the Sub-Committee,

The National Indian Youth Council is privileged to testify before you on this very important legislation. But first, a little bit about NIYC is in order.

The National Indian Youth Council is an organization of 15,000 Indian people nation wide with over 50 chapters and affiliates. These chapters are located in Indian communities, jr. high schools, high schools, colleges, and universities, and prisons. NIYC is active in civil rights issues, action research projects, and running educational and labor programs. It is conceivable that NIYC is the leader in experimental and innovative educational programs.

The National Indian Youth Council national office and the NIYC divisions of Oklahoma, Northern Arizona, Southern Arizona, Nevada, Wisconsin and New Mexico wish to call attention to certain sections of S. 1017.

1. Definitions, Sec. 4(4) "tribal organization" needs clarification. This definition seems cumbersome to the average Indian.

2. Title I Sec. 102(a)(4) . . . "community support for the contract." How can community support be measured for a contract? If this means letters or petitions NIYC will probably out-poll all tribal councils in Oklahoma.

3. Title I Sec. 102(b)(3) . . . "provide the tribe with a hearing . . . . and the opportunity for appeal . . . ." It appears to NIYC that the avenues of appeal are severely limited by appealing to the one who was responsible for turning you down in the first place.

4. Title I, Sec. 103(a)(4)—Same comment as the second.

5. Title I, Sec. 103(b)(3)—Same comment as the third.

6. Title I, Sec. 104. This section apparently excludes any group that does not have the blessings of the tribal council. NIYC is a little hesitant to rely too heavily upon the tribal chairmen and councils, because many are minority elected because of lack of run-off provisions in many tribal constitutions.

7. Title I, Sec. 106(c) ". . . for a term not to exceed one year. . ."

This section appears to be inconsistent with the title of this act. Tribes and tribal organizations can and should be funded for multiple years in order to establish continuity of their perspective programs.

8. Title I, Sec. 170(b)(1) ". . . to the extent practicable, consult . . ."

This section is much to vague; public hearings with opportunity for all Indians to be heard is desirable and should be required.

9. Title II, Part A, Sec. 202, (Sec. 6 ". . . may . . . be reimbursed by him for the full per capita costs."

Does this mean such school districts will receive payment committee sign off on the programs? The public school districts would have to educate our children if there was no such thing as Johnson-O'Malley funds at all.

10. Title II, Part A, Sec. 203(2)(A) ". . . to provide general operating expenditures to schools and school districts educating Indian children."

This has been a pain in the past, in such states as Arizona, and the problem will not be alleviated merely by making legal, that which was questionable.

11. Title II, Part C, Sec. 206(d)(2) ". . . meet the requirements of the State and local building codes . . . set by the state educational agency . . . or by the local government in the jurisdiction within which the facilities are situated."

This section quite obviously further erodes the Federal government's trust responsibility to Indian land. The states and other political subdivisions have not been known for their Indian advocacy and they have no legal or moral sense of trust reponsibility. NIYC believes this section to be particularly dangerous to tribally owned land.

12. Title II, Part C, Sec. 206(a) . . . "acquisition . . . if such facilities are necessary for the education of Indians . . ." but further the act states in Title II, Part C, Sec. 206 (e) ". . . Such consultation shall be advisory only . . ."

Again, NIYC believes this part to be inconsistent with the Titles of this Act.

13. Title II, Part G, Sec. 217(a).

Same as No. 8.

14. Title II, Part G, Sec. 219.

It is reassuring to know that this act does enable Title IV to continue in effect. However, laced throughout the Act are references to the Johnson-O'Malley Act, which leads NIYC to believe this singular and unique Indian Education Act is in jeopardy. Rather than doing away with the Johnson-O'Malley Act, let this sub-committee urge the Commissioner of Indian Affairs to adopt good sound regulations. The amendments contained in this bill do tighten up the JOM Act, but it means that now Indians will be faced with rigid guidelines at a time when we are attempting to contract more in accordance with stated administration policy, namely self-determination.

It is also disturbing to note that Indian students are still going hungry in school. The transfer of the school lunch program for Indians from BIA to the Agriculture Department has failed miserably. Perhaps it would be a good idea to provide for child nutrition through the JOM Act again.

And the Bureau has a responsibility to Indian students not only in the BIA boarding schools, but also in the public schools as well. In providing for contracting with local groups, this bill should also provide the necessary police power to insure the best possible benefits for Indian children.

If the points raised are not dealt with to the satisfaction of NIYC, rest assured that our chapters and members are standing by to massively oppose this entire bill. The NIYC wants change and legislative reform, but let us undertake this task with caution and in a rational manner. Thank you.

Native American Rights Fund,
Boulder, Colo., May 15, 1974.

Hon. Lloyd Meeds,
U.S. House of Representatives,
Cannon House Office Building, Washington, D.C.

Dear Congressman Meeds: I genuinely appreciate your invitation to testify at the hearings on S. 1017 before your Subcommittee on May 20 and 21, 1974. Unfortunately, I have a prior commitment which I have attempted to break but cannot. There are, however, several considerations which I would like to draw to your attention.

As you know, a large number of Indian organizations have submitted proposed Johnson-O'Malley regulations (the "Red Regs") to Commissioner Thompson. For your reference, I enclose two copies of the "Red Regs."

The "Red Regs" resulted from an inordinate amount of work and study of organizations which are deeply involved in the day-to-day administration of the Johnson-O'Malley program. Since the "Red Regs" were submitted in late February, several other organizations have joined in support of them. We are advised that still more organizations will offer their approval. The "Red Regs" appear to represent a near-unanimous view of the Indian education community on almost all of the provisions in the "Red Regs."

Many people in the "Red Regs" group have suggested that the basic principles from the "Red Regs" be incorporated into a new Johnson-O'Malley statute. Title II, Part A of S. 1017 deals directly with Johnson-O'Malley and Title II, Part A already includes amendments to the Johnson-O'Malley Act. Accordingly a new Johnson-O'Malley Act could very logically be included as the main thrust of Title II, Part A. We would hope that you would be particularly interested in the recommendations by the "Red Regs" groups concerning a rewriting of the Johnson-O'Malley Act. I emphasize that any proposed Johnson-O'Malley Act would be extremely short and uncomplicated. I doubt that it would run more than five or six very short sections.

Representatives of the "Red Regs" organizations and of several other organizations will be meeting in late May to discuss, among other things, a proposed Johnson-O'Malley Act, as outlined above. Ideally, we would have hoped to present the proposed Johnson-O'Malley Act to you at the hearings on S. 1017. Because of the short notice, however, it has not been possible to arrange a meeting of so many people and to give the many organizations an opportunity to approve the proposed act after the meeting.

We anticipate that a proposed act will be presented to you in mid-June. Such a time period will permit us to have time to send out drafts in advance of the meeting, to have thorough discussion of the drafts at the meeting, and to give all organizations sufficient time to act upon the proposed act.

For these reasons, we would request that you keep the record open for the submission of the proposed Johnson-O'Malley Act until approximately June 20. It may be that you will think it appropriate to hold an additional one-half day of hearings to discuss the provisions of the proposed act. Again, I emphasize that we would very much prefer to be able to present the proposed act to you at the hearings next week. All of the "Red Regs" groups are, however, working on this important matter as quickly as possible. We believe that the product will be well worth your careful consideration.

May I again express my personal regret at my inability to appear before your Subcommittee next week.

Very truly yours,

Charles F. Wilkinson.

Statement of C. Stanley Lowell, Associate Director, Americans United for Separation of Church and State

S. 1017 is one of those pieces of legislation which, with an ostensibly noble purpose, ends in the performance of mischief. It is a bill designed to permit federal funding for religious schools serving the Indians. The bill authorizes the Secretary of Health, Education and Welfare "to establish and carry out a program of making grants to and contracts with institutions of higher education and other public, private nonprofit organizations or agencies. . . ." The bill would provide $10 million during the first fiscal year and $15 million for each of the two succeeding years for such purposes. The money would be provided for school construction and various educational services for Indians.

The purpose here is commendable. It is certainly worthy and highly desirable to improve educational services and standards for the Indians. Unfortunately, the legislation seriously encroaches upon First Amendment liberties as contained in the doctrine of separation of church and state.

It is the apparent legislative intent to provide government subsidies to church educational institutions in a manner that the Supreme Court has repeatedly declared offensive to the Religion Clause of the First Amendment. This Amendment forbids Congress to "make any law respecting an establishment of religion or prohibiting the free exercise thereof." Government aid to church schools by any one of a variety of methods has repeatedly been included in this ban. It is not a proper business of government to undertake such a substantial form of aid to religion or, in the process thereof, to become entangled with affairs of religion.

What is envisaged here is a series of grants of a general nature to religious institutions, including "private nonprofit organizations or agencies. . . ." The vague and nebulous nature of this proposal would leave it wide open to enormous violation on the church-state count. Not only church schools, but agencies of worship themselves could be directly subsidized by this proposal.

What this legislation imperatively needs is a "sectarian disclaimer" which would ban any use of the funds involved for religious institutions. In the Pennsylvania cases, *Sloan* v. *Lemon*, decided in June 1973, the Court found that in the institutions involved "more than 90% of the children attending nonpublic schools . . . are enrolled in schools that are controlled by religious organizations or that have the purpose of propagating and promoting religious faith." The same situation prevailed in other instances where state aid to religious institutions was struck. The same situation would undoubtedly prevail in regard to the aid programs projected in this legislation. It thus becomes clear that the constitutional stricture against aid to religion applies not only to government grants to churches, but also to church schools.

Recall now the meaning of the "establishment of religion" clause of the First Amendment as defined by the Supreme Court in *Everson* v. *Board of Education* (1947). "The establishment of religion clause of the First Amendment means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the federal government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.'"

This specific doctrine of the First Amendment has been reiterated by the Court on numerous occasions since, as in *McCollum* v. *Board of Education* (1948), *Zorach* v. *Clausen* (1952), *McGowen* v. *Maryland* (1961), *Engel* v. *Vitale* (1962); and the general doctrine itself is also set forth in the 1971 cases of *Lemon* v. *Kurtzman* and *Earley* v. *DiCenso* and in the 1973 cases of *PEARL* v. *Nyquist*, *Sloan* v. *Lemon* and *Levitt* v. *PEARL*.

The argument is frequently advanced that Indian affairs provide the exception on the matter of state aid to religion because of the case of *Quick Bear* v. *Leupp* (1908). In the legislation then under consideration, however, Congress was dealing not with federal funds but with treaty funds held by the federal government as trustee for the Indians. The Indians themselves were the real owners and the funds, it was found, could be transferred to religious institutions at the designation of the Indians themselves.

It is evident that no such condition exists here. This is a proposal to use the taxpayers' funds for religious purposes in a manner proscribed by the First Amendment. The proposals here are quite likely unconstitutional because of the church-state complication. The possibility of such proposals being overturned in the courts cannot be excluded. It would be far wiser for Congress to pursue its legislative purpose by providing financial aid for education to public institutions rather than to those that are sectarian.

Americans for Indian Opportunity,
Washington, D.C., May 29, 1974.

Hon. Lloyd Meeds,
Chairperson, House Indian Affairs Subcommittee on Indian Affairs, Washington, D.C.

Dear Lloyd: This is in response to your invitation to comment on S. 1017. You are probably well aware that this bill comes to you with a history of confusion and divided opinion. I find this unfortunate because in my opinion, such division should never have occurred.

First, I find the joining of the two different substantive matters unnecessary and contributive to the awful dilemma which many of us found ourselves in: the self-determination part should have been severed from the education part. Quite clearly the contracting authorization is needed because it would contribute procedurally to removing certain obstacles which now impede progress. I don't see how anyone could oppose such movement. We need this authority, and it should not be hampered by other arguments extraneous to the merits of this part of the bill.

Second, after reviewing the JOM situation, it becomes apparent that these problems have arisen from the manner in which the present regulations (25 CFR 33) have been administered or, perhaps more to the point, have not been administered. The record reveals a misuse of the funds by some States which happens due to unclear regulations and by a clear lack of accountability for the use of the funds (see enclosure—"JOM Rip-Off in Oklahoma"). The authorizing legislation for JOM funds and regulations (25 U.S.C. 452) would be difficult to improve upon:

> The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State . . . and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress of Indians in such State. . . .

It would appear that what is needed at this point is not new legislation but better regulations which would control the conduct of all officials who handle JOM funds.

Last February 28, new JOM regulations were forwarded to Commissioner Thompson for his consideration (enclosed). He has been urged on numerous occasions and by approximately fifty Indian organizations to adopt the "Red Regs" which were drafted by highly competent Indian educators and lawyers. I have been informed, however, that these proposed regulations are being opposed by "old line" bureaucrats who apparently have no real concern for what Congress intended when it enacted the 1934 bill—quality education for Indian children. Opposition to the proposed regulations seems directed to the support of "business as usual". It would seem that after forty years, the BIA should be able to right the many wrongs of the past. Hopefully, our new Commissioner will do the right thing for our children. I therefore urge the Commissioner to go forward as quickly as possible.

I believe that the adoption of the "Red Regs" would provide an opportunity for the Johnson-O'Malley funds to be used effectively, therefore making the adoption of the education portion of S. 1017 which would amend or replace JOM unnecessary. It is my feeling that the remainder of the education portion of the bill should be studied further and address the total needs of Indian education including adequate construction monies, adequate provisions for community colleges and adequate training programs.

With warm regards,

LaDonna Harris, *President.*

Alaska Federation of Natives, Inc.,
Anchorage, Alaska, May 20, 1974.

Hon. Don Young,
Representative of Alaska,
Longworth House Office Building, Washington, D.C.

Dear Congressman Young: We have monitored the progress of Senate Bill 1017 for several months both in the Senate and the House of Representatives. Like virtually all Indian organizations throughout the United States, we vigorously support Title I of Senate Bill 1017. The contracting procedures in Title I are progressive and offer the promise of a new dimension in Native American self-government. Title II, however, has been extremely controversial and the result was a number of amendments in the Senate. You as well as Senators Stevens and Gravel have received our objections to Title II. Our position regarding these two titles is they should be separated. We believe that Title I should pass the United States Congress at the earliest possible date. However, Title II, although amended it is still inadequate and should be referred to committee for further, intensive study. A good beginning for Title II we suggest would be the proposed "Red" Johnson-O'Malley regulations drafted and supported by 45 Indian Tribes and tribal organizations throughout the United States. The proposed "Red" regulations contain much of the substance necessary to incorporate into an extremely effective and responsive Title II.

Because of our strong position regarding Title I, our comments will be directed to that title.

A good story that will illustrate what Indian self-determination can do is the story of the Alaska Federation of Natives, Inc., Johnson-O'Malley Program.

For years the Bureau of Indian Affairs had contracted with the State of Alaska to provide Johnson-O'Malley services to Alaska Native people. Expenditures of Johnson-O'Malley funds were primarily in the Bureau of Indian Affairs day schools being transferred to the State and the State Dormitory and Boarding Home Program.

However, in March 1973, the State Board of Education met and directed "the State Department of Education to cease acting as a single State agency for all programs operated directly by the Department; and that the Bureau of Indian Affairs be urged to proceed with the creation of a statewide Johnson-O'Malley Review Committee for the purpose of maximizing Native input and that this resolution be implemented for this Fiscal Year 1974."

With agreement from the Bureau of Indian Affairs, the Alaska Federation of Natives, Inc. organized the Johnson-O'Malley Review Committee, comprised of a representative from each of the 12 Native regional corporations. Responsibilities of the committee include setting policies for the administration and disposition of Johnson-O'Malley funds; advising the Bureau of Indian Affairs of the educational needs and priorities for JOM monies in Alaska, particularly in rural areas; and reviewing applications for Johnson-O'Malley support and recommending those agencies to receive assistance.

Among its first decisions last year, the Committee specified that Johnson-O'Malley funds should not support any type of basic educational instruction but rather should be used for supplementary and enrichment educational programs for native students in public schools, grades K-12. Over 45 applications for fiscal year 1974 support, totaling $6,973,261, were reviewed in meetings with the BIA representatives providing technical assistance to the committee about programs eligible for funds under JOM guidelines. In addition to the committee's recommendation that the AFN be the prime contractor with the Bureau of Indian Affairs for administering Johnson-O'Malley funds, close to 30 projects throughout the State received financial assistance. These projects, in the total amount of $4.625 million provide the following services to some 6,750 Native students.

A. Eight (8) Native bilingual and/or bicultural programs;

B. Seven (7) counseling and guidance programs;

C. Four (4) supplementary education efforts, including dramatic arts; journalism training; foreign culture and language studies;

D. Five (5) activities and/or supportive services programs, including transportation; driver's training; high school canteen center;

E. Four (4) local or community education programs;

F. One (1) State Boarding Home Program, including subcontracts with five organizations, on the condition that FY 1974 was the last year of Johnson-O'Malley funding. During FY 1975, funding will come from the State General Fund.

Under State administration all planning and decision-making rested with the State Board of Education. All positions were classified under Alaska State Personnel Rules and naturally "locked out" most Alaska Natives. They served about 2,000 in FY 1973.

Under Alaska Federation of Natives, Inc. administration, all planning was completed by a local JOM Committee. The services were subcontracted to regional non-profit or village corporations and school districts. About 99% of the administrators are Alaska Natives and are doing an excellent job. The decisionmaking rested with a Johnson-O'Malley Review Committee composed of Native parents from each of the 12 regional corporations stated under the Alaska Native Claims Settlement Act. We served 6,750 Alaska Natives during the initial year and our administrative costs were 3% of the total allocation of Johnson-O'Malley funds to the Juneau Area Office.

Applications for fiscal year 1975 Johnson-O'Malley funds number 97, requesting a total of $11 million.

The difference under different administrations is clear. We, the Alaska Natives, are responsible for planning, decision-making, program and fiscal accountability, and administration instead of *they* and we have been somewhat successful.

There are other examples here in the State of Alaska. The Tlingit-Haida Central Council has testified and explained their experiences regarding contracting for the operation of the Southeast Agency, Bureau of Indian Affairs. The Indian Health Service has made notable progress in improving the delivery of health services to Alaska Natives and since 1955 through the growing population of the Alaska Natives in the planning, implementation and evaluation of health service programs.

In conclusion, we believe that enactment of Title I of Senate Bill 1017 will provide "clear cut" authority for the development of Indian Self-Determination and would advocate its passage. The testimony on behalf of this bill has been long and hundreds of statements have been recorded. One of them is the President. He stated the following on June 8, 1970:

"Both as a matter of justice and as a matter of enlightened policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian act and Indian decisions."

Our best wishes and please accept this letter as our testimony on Senate Bill 1017, House Interior and Insular Affairs Committee.

Sincerely,

GORDON JACKSON,
Vice President, AFN Human Resources.

AN ANALYSIS—INDIAN TREATIES A HUNDRED YEARS LATER

(By Vine Deloria, Jr.[1])

(Judgment day is arriving in Indian Affairs, and everyone is confused as hell about it.)

The treaty relationship between the United States and the Indian tribes has been a key factor in American history, and the failure of the United States to fulfill its treaty promises has haunted the Indians for most of the past century. While treaties are now interpreted by the Indian Claims Commission and the executive branch of government as major real estate deals, in fact most of them were peace treaties in which the tribes promised to cease their warfare with the settlers in return for which the United States would guarantee them peace, services such as education and annuity rations, and the protection of its laws.

Until the rise of the recent Indian movement the federal government had the best of all possible worlds. It had long since gotten peace, and when the tribes were confined on the reservations and without sufficient military power to retaliate, it also got most of the Indian lands. In return, the United States assumed some social services not promised in the treaties and agreements. But when it turned the responsibility for providing these services over to the Bureau of Indian Affairs in the 1890s by allowing the bureaucrats amost complete control over Indian lands and properties, the federal government again managed to secure more benefits than it was entitled to have because of the inability of the tribes to contest what it did.

In the 1920s and 1930s many of the tribes sought acts of Congress which allowed them to sue the government in the U. S. Court of Claims, and those decades were characterized by the many delegations of Indians rushing to Washington seeking redress for the wrongs they had suffered at the hands of the government. In most cases the tribes were not allowed to recover anything from their efforts to sue on treaty provisions. The Court of Claims was incredibly conservative, and saw its jobs as eliminating as many tribal claims as possible, rather than settling a longstanding dispute between the tribes and the government. Many cases were dismissed on the highly technical grounds that the jurisdictional act of Congress allowing a given tribe to sue had some fatal defect which precluded the particular argument the tribe intended to use.

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By the late 1930s it was getting very onerous to Congress to have tribal delegations under foot in Washington seeking legislation to give them standing to sue the government. After nearly a decade of controversy and many false starts, the Congress passed the Indian Claims Commission Act in 1946 and gave all the tribes a five year period to file all claims against the government that had accrued prior to 1946. While the claims commission act itself was liberally written, the newly appointed commissioners proptly gave its eligibility sections extremely narrow interpretations and eliminated some of the major claims which the tribes had outstanding. A frequent device for eliminating a tribal claim was to declare that the cause of action was really an individual matter and not a tribal matter, thereby precluding the suit altogether.

The Indian Claims Commission has been in existence for 28 years now and has settled less than half of the land and accounting claims filed by the tribes. It has sidestepped most of the claims which did not involve lands, such as compensation for massacres of Indians at Wounded Knee and Sand Creek and other depredations committed by the United States Army against the tribes. The influence of the Indian Claims Commission has been immense because many federal policy-makers have assumed that any claim that the tribes have are being handled by that commission. Such is not true and dissatisfaction has grown to the point where something radically needs to be done to put the treaty matter at rest.

Behind Alcatraz, the occupation of numerous federal lands, the occupation of the Bureau of Indian Affairs headquarters in 1972 and Wounded Knee 1973 stands this unresolved treaty issue. Most of the complaints of Indians today go to the portions of the treaties where the government promised it would abide by specific provisions or that it would do certain things. The failure of the United States to perform according to treaty has meant generations of resentful Indians waiting for that spark of protest to burst into a national flame. And we have finally, in the past year, seen that resentment burst into open warfare with the United States.

In order to understand how deeply the treaty issue affects Indians and how confused the situation can be with respect to the fulfillment of treaty provisions, we must look at several sections of the 1868 Fort Laramie Treaty with the Sioux and Arapaho which was the major complaint at Wounded Knee. The 1868 treaty was one of a series of treaties signed in 1867 and 1868 with the tribes of the Great Plains as a result of President Grant's Peace Policy. That policy was partly philanthropic and partly economic. Friends of the Indians hated to see the wars of extermination carried out against the tribes when they were only defending themselves on their own lands. They pointed out that so fierce were the wars between the Indians and the cavalry that it would be infinitely cheaper to simply provide rations and services to the tribes on reservations guaranteed by the government than to continue what was essentially a war of attrition on both sides.

In 1867 at Medicine Lodge Creek in Kansas, the tribes of the southern plains, the Cheyenne, Arapaho, Kiowa, Comanche, and Kiowa-Apache signed treaties with the United States. A year later at Fort Laramie the Crow, Northern Cheyenne, Northern Arapaho and Sioux signed treaties. In what is now Idaho at Fort Bridger the Eastern Band of Shoshones signed and in the southwest the Utes and Navajos signed treaties in 1868. All of these treaties had the same basic formulas which provided educational benefits, reserved rights for hunting, tribal "Land Books" for allowing tracts of land to individuals within the reserved areas, and provisions that no further land cessions would be asked of the tribes without the approval of three-quarters of their adult males.

The Sioux treaty was the hardest to obtain. The Army had built a series of forts through the best Sioux hunting lands and as the gold miners traveled along this row of forts toward the Montana gold fields, it became known as the Bozeman Trail. Realizing that the extinguishment of game in the area would doom their way of life and remembering that the Treaty of 1851 at Fort Laramie guaranteed them hunting lands inviolate, the Sioux conducted a fearful war against the United States led by the great Oglala chief Red Cloud. From the first break of spring until late November, 1868, the United States waited at Fort Laramie for the various bands of Sioux to come to the fort and touch the pen signifying the end of the war and the acceptance of the treaty. Band after band signed, but peace did not come. Red Cloud demanded the withdrawal of the soldiers from his lands before he would sign the treaty.

As the toll of dead mounted along the Bozeman, the United States began to knuckle under. Regardless of the numerous signatures already on the treaty it was obvious that unless the United States met Red Cloud's terms the Bozeman would remain a very high insurance risk area. Finally, the United States agreed to move the forts and called Red Cloud in. He refused to come until the soldiers had left, and when the forts were finally emptied and Red Cloud was able to walk through the ashes, he arrived at Fort Laramie with his band and calmly touched the pen signaling the end of the only Indian war the United States would ever lose.

It is important to understand the actions of Red Cloud because in 1969 when the Indian college students occupied Alcatraz, they claimed the island under the terms of the 1868 treaty, remembering that Red Cloud had retaken federal property following the treaty provisions. Over the intervening years Indians had gotten the idea that some obscure provision of the 1868 treaty gave them the right to invade and claim surplus federal property. In succeeding years as situations changed, incidents such as this one achieved some popular yet nebulous status, and when the United States made no effort to clarify the treaty provisions, the incident grew into a form of almost sacred belief shared by Indians and bureaucrats alike.

Following the defeat of the Seventh Cavalry at the Little Big Horn in 1876, the United States sent a commission to treat with the Sioux and Arapaho for the cession of the Black Hills area. The commission failed miserably to get the required three-quarters signatures of the Sioux, but reported to the Congress that they had made the agreement; and in February, 1877, the Congress passed an act which purported to confiscate the Black Hills area. The Sioux complained bitterly that the cession did not follow the procedures set down and ratified by the Congress in the treaty of 1868, but to no avail. The United States has always maintained in public that the deal was legal, while admitting privately that it was one of the biggest swindles in world history.

In all subsequent land cessions made by the tribes signing 1867 and 1868 treaties, including later land cessions with the Sioux, the government always waited until it had the required number of signatures. And when it could not get them, as in the case of the Kiowa and Comanche in the Jerome Agreement of 1892, signatures were forged so that the agreement appeared to be legal. The alleged cession of the Black Hills thus stands out conspicuously in American history as the most blatant case of treaty violation.

Even if one were to follow the argument of the United States and agree that the 1876 agreement were legal (and this sentence is in no way to be construed as indicating that the agreement was a legal act) even then the United States did not fulfill its promises. The 1876 agreement promised that the government would build comfortable houses for every Indian who would agree to take an allotment. Needless to say the government never did anything of the kind. Rather, the 1876 agreement's terms were forgotten as soon as the area was secured to the United States.

Today, 106 years after the signing of the 1868 treaty, the Sioux still have not been paid for the lands taken by the United States, nor has the United States, in most cases, provided the services promised under the treaty. The same case can be made for almost any other important treaty signed with the tribes. The Five Civilized Tribes, for example, were promised lands to be held in "fee simple" by the tribe upon their removal to Oklahoma. In the 1890s when the pressure developed to form the state of Oklahoma, the United States courts promptly ruled that fee simple, the most sacred property concept of the Anglo-Saxon world, was not really sacred when held by an Indian tribe. The Five Civilized Tribes were allotted—that is their tribal holdings were divided among individuals—and their governments were abolished, at least in theory. Eventually, as everyone knows, they became vassals of Phillips Petroleum Company when their appointed chief W. W. Keeler, who is one-sixteenth Cherokee, also happened to be the chief executive officer of the oil company.

The tribes of the Pacific Northwest had a similar experience. During territorial days they suffered harassment just short of extermination when they tried to exercise reserved treaty fishing rights. The enabling act admitting Washington into the union as a state required the new state to foreswear all jurisdiction over the lives and property of Indians. But the state promptly began a war over Indian fishing rights that continues at a brisk pace today. The federal government had made perfunctory efforts to fullfill the treaty provisions regarding fishing, but generally the federal employees have worked behind the scenes to deprive the Indians of their rights to fish. (See *RRR*, Vol. 2, No. 3, and Vol. 5, No. 2.)

It would seem, in a nation of laws, that there would be some legal recourse available to the tribes who can prove that their treaties have been violated. The problem has been a very complicated one. An amazing number of cases have been taken in both state and federal courts in an effort to clarify the treaty rights of Indians. Some surprising decisions have been rendered. In one case, *Ward v. Race Horse*, a treaty provision was repealed by implication. The decision proved so outrageous to Congress that it appropriated funds to compensate the tribe for its alleged loss. Another case taken on the same treaty decades later, *United States v. Cutler*, produced the amazing decision that not even the Migratory Birds Convention with Great Britain was sufficient to override the treaty clause granting the tribe the right to hunt on the reservation. Between these two extremes, the cases have litigated almost every aspect of the treaties that can be imagined.

Courts cannot reach ultimate decisions on treaties, however, since their task is to interpret the treaty articles in accordance with the actions of both parties and in view of what the treaty was supposed to accomplish for both parties. Depending upon the knowledge of history available to the judge rendering the decision, the treaty provisions have come to mean any number of things. In the last analysis the courts have ruled that the decision on what happens to the tribes rests with the Congress, and several times courts have simply said that the question under consideration is a political one that must be decided by Congress.

The various administrations have also been at loose ends in regard to treaties. Some administrations have been antagonistic toward Indians—among them, the Theodore Roosevelt and Eisenhower administrations. Others such as the Truman and early Nixon administration have been rather friendly and sympathetic. None of the administrations since the 1870's have known exactly how to go about handling the treaty question, however. The major problem facing the executive branch is that it cannot tell Congress what to do; it can merely present messages to Congress with the hopes that Congress will in fact do something. Not even the Nixon administration, however, has understood the treaty problem or had the intestinal fortitude to request that Congress confront the treaty question.

Congress has at least two constitutional clauses to justify its claim to plenary powers over Indian lives and properties. The interstate commerce clause gives Congress primacy in dealing with commerce among the several states and with the Indian tribes and the treaty-making power enables Congress to approve or disapprove treaties and agreements made by the executive branch with Indian tribes. The courts have interpreted the many treaty cases so that the major responsibility for Indian treaty rights lies today at the feet of Congress. Until 1973 there was no effort made by the Congress to shoulder its constitutional responsibility.

Following the occupation of the Bureau of Indian Affairs and the national election of 1972, a great many things began to happen. Both the Senate and House Indian subcommittees got new chairmen, Senator James Abourezk and Congressman Lloyd Meeds. Both men were well known for their incisive and intelligent approach to Indian matters and they began to clear out the many pieces of legislation that had lingered in their committees for several Congress. The two subcommittees got the Menominee Restoration bill through the Congress, and it was signed in December restoring the Menominees to federal status. (See *RRR*, Vol. 5, No. 1.) Other pieces of legislation also moved, and the Indian docket began to need some major legislation for the first time in many Congresses. Wounded Knee finally provided the impetus for radical change.

During the confrontation at Wounded Knee both Meeds and Abourezk visited the reservation and talked with people on both sides of the dispute. One thing became apparent during the occupation of the village, and that was that the century of neglect and confusion during which the United States had refused to confront the treaty issue had come to an end. Even if Wounded Knee could have been settled with no deaths or criminal charges, the treaty issue would not be set to rest by a total reformation of the tribal government. It was ingrained too deeply into the resentment of the people to be avoided.

Senator James Abourezk introduced Senate Joint Resolution 133 in mid-July of 1973 in an effort to force some of the issues in Indian affairs to surface. The resolution, if passed into law, would create a 15-man commission that would investigate the fulfillment of the treaties and agreements between the United States and all of the tribes, that would review the policies, practices and structures of the federal agencies dealing with Indians, and that would collect and compile the data necessary to understand the extent of present and future Indian needs. In short, in one gigantic leap, Senator Abourezk put Congress into the forefront of the Indian movement by proposing a vehicle more daring and creative than even the Indians had conceived.

The response to the Abourezk proposal was puzzling except to studied observers of Indian affairs. The National Tribal Chairmen's Association said that they really didn't want any more studies and that if people would just leave the tribal chairmen and the Bureau of Indian Affairs alone they could work everything out.

The National Congress of American Indians made its stand clear. The Nixon administration attempted to get the Indians to support the idea that the five Indian members authorized by the resolution to sit on the commission would be presidential appointees. Indian flatly rejected that idea, having already suffered enough from CREEP's propensity to appoint nonentities to positions because of their Republican credentials or personal loyalty to the President.

Perhaps the only people who really want the commission are the silent majority of Indians who want less talk and more action and who see in an investigative and study commission a chance to present arguments and ideas that have been neglected for nearly a century by both Indians and bureaucrats. There is no doubt that the Abourezk Resolution would be historic in many senses. Not since the Senate Indian Committee investigations of 1928–1932 has a major investigation of Indian Affairs been conducted. During that time a great many policy changes were made with only the premise that "it seemed like a good idea at the time" for justification for their existence. There has never been a commission that was designed to confront treaty rights issues directly.

The resolution has passed the Senate and is now in the House Subcommittee on Indian Affairs where Congressman Lloyd Meeds has promised early hearings. While it may get passed in the House there remains a question of whether the President will sign it since it may not contain the provision that he would appoint the commission's Indian members. The question that arises now in conjunction with the resolution is where the blame will fall if the resolution does not become law. Have the Indians been talking about treaties even though they are not ready to deal with the issue? Or must the President have total control over the input of the commission by appointing some administration Indians? The fact remains that Senator Abourezk has taken the initiative and convinced at least the Senate that it is time that Congress exercised its plenary powers to deal with Indian matters, and he has called the bluff of the Indians and the administration—leaving a frightened Bureau of Indian Affairs wondering whether or not it can survive an open investigation of its operations.

Senate Joint Resolution 133 contains everything that Indians, and particularly Indian activists, have been crying about these many years. It remains to be seen whether Indians have been serious or not. And in spite of the present administration's apparently benign posture on Indians, the question of whether that concern involves allowing the Congress to perform its constitutional duties is now on the agenda. Judgment day is arriving in Indian Affairs and everyone is confused as hell about it.